
TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #06-487

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING EXTENDED PERMIT TERMS FOR MINOR SOURCE OPERATING PERMITS (MSOPS) AND FEDERALLY ENFORCEABLE STATE OPERATING PERMITS (FESOPS)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments concerning extended permit terms for minor source operating permits (MSOPS) and federally enforceable state operating permits (FESOPS). The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2-1.1-9.5](#); [326 IAC 2-6.1-7](#); [326 IAC 2-8-4](#); [326 IAC 25-2-2](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-15-3-2](#); [IC 13-17-3-4](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#)... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

In 1996, the Indiana General Assembly passed a law that allows a permit term of up to 10 years for certain permit renewals. Except as provided in federal law, Indiana Code 13-15-3-2 allows that "a valid permit... that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department."

IDEM has determined that extending MSOP and FESOP permit renewal terms for up to 10 years will provide time and cost savings to IDEM and the affected sources by reducing the time and effort required for more frequent permit application submittal and processing. While sources with MSOP or FESOP permits represent only a small amount of emissions in Indiana, they require a large amount of IDEM permitting resources.

The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) rulemaking includes a section addressing 10 year permits for MSOP and FESOP permit renewals. Because the ESP/CLEAN rulemaking is further along in the rulemaking process, the provision will not be removed from that rulemaking so that it will be available to members of those two programs as quickly as possible. However, when this rulemaking becomes effective, the provision in the ESP/CLEAN rule tentatively located at [326 IAC 25-2-2](#) in the draft ESP/CLEAN rule will be obsolete and may be removed.

In accordance with [IC 13-14-9-7](#), a section 7 notice is appropriate for this rulemaking because the rulemaking policy alternatives are so limited that the first public notice and comment period would provide no substantial benefit to the environment or persons affected by the rule.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This rule is authorized under [IC 13-15-3-2](#), which allows certain permit terms to be up to 10 years.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program

provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/compliance/ctap/index.html.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue, IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on 10-year permits for MSOPs and FESOPs. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) Except as provided in federal law, Indiana Code 13-15-3-2 allows permits for activities of a continuing nature to be renewed for a period of not more than 10 years as determined by the department.
- (2) Extending MSOP and FESOP permit renewal terms for up to 10 years will provide time and cost savings to IDEM and the affected sources by reducing the time and effort required for more frequent permit application submittal and processing.
- (3) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#06-487(APCB) Ten-Year Permits for MSOPs and FESOPs
Christine Pedersen Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor east reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by December 1, 2006.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 2-1.1-9.5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-1.1-9.5](#) General provisions; term of permit

Authority: [IC 13-14-8](#); [IC 13-15-3-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-11-2](#); [IC 13-15-3-6](#); [IC 13-17](#)

Sec. 9.5. (a) Except as provided in [IC 13-15-3-6](#)(a) and subsection (b), the following are effective for a term not to exceed five (5) years:

- (1) A permit to construct.
- (2) A permit to operate.
- (3) A permit modification.

(b) In accordance with [IC 13-15-3-2](#), the following permit renewals are effective for a term not to exceed ten (10) years:

- (1) A minor source operating permit renewal under [326 IAC 2-6.1](#).
- (2) A federally enforceable state operating permit renewal under [326 IAC 2-8](#).

~~(b)~~ (c) Notwithstanding the permit term terms in subsection subsections (a) and (b) any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until the:

- (1) the condition is modified in a subsequent permit action; or
- (2) the emission unit to which the condition pertains permanently ceases operation.

(Air Pollution Control Board; [326 IAC 2-1.1-9.5](#); filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)

SECTION 2. [326 IAC 2-6.1-7](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-6.1-7](#) Operating permit renewal

Authority: [IC 13-14-8](#); [IC 13-15-3-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 7. (a) ~~An~~ A new operating permit shall be valid for a period of time not to exceed five (5) years, and a permit renewal shall be valid for a period of time not to exceed ten (10) years. However, permits may be valid for any lesser period if determined necessary for administrative reasons by the commissioner.

(b) At least ninety (90) calendar days ~~prior to~~ before the expiration date of an operating permit, the applicant shall apply for a new operating permit from the commissioner if the applicant wishes to continue operation of the source. If a timely and sufficient application for renewal has been made, the existing permit does not expire until a final decision on the application for renewal has been made by the department.

(c) The application for the operating permit renewal shall include the following information:

- (1) Certification that the source has not changed from the initial permit issuance or that all modifications to the source have been reviewed and approved in accordance with this rule.
- (2) Identification of any changes to the source that are subject to this article that have not received approval ~~prior to~~ before construction or operation.

(Air Pollution Control Board; [326 IAC 2-6.1-7](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1020; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 801)

SECTION 3. [326 IAC 2-8-4](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-8-4](#) Permit content

Sec. 4. The following shall be included in each FESOP issued under this rule:

(1) Emission limitations and standards, including those operational requirements and limitations that limit the source's capacity to emit any air pollutants such that it does not fall within any of the categories listed in [326 IAC 2-7-2\(a\)](#) and that assure compliance with all applicable requirements at the time of FESOP issuance. The FESOP shall include the following:

(A) The FESOP shall:

- (i) specify and reference the origin of and authority for each term or condition; and
- (ii) identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(B) Where an applicable requirement of the CAA is more stringent than an applicable requirement of regulations promulgated under Title IV of the CAA, both provisions shall be:

- (i) incorporated into the FESOP; and ~~shall be~~
- (ii) described in the permit as enforceable by the commissioner and the U.S. EPA.

(C) If an applicable implementation plan allows a determination of an alternative emission limit for a FESOP source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the commissioner elects to use such process, any FESOP containing an alternative emission limit based on such an equivalency determination shall contain provisions to ensure that ~~such the~~ emissions limit has been demonstrated to be:

- (i) quantifiable;
- (ii) accountable;
- (iii) enforceable; and
- (iv) based on replicable procedures.

(D) Emission limitations applicable to startup, shutdown, and emergency bypasses shall be addressed on a case-by-case basis in the permit. ~~Such The~~ limitations shall be designed so as to minimize the:

- (i) frequency of such events; and ~~to minimize the~~
- (ii) excess emissions caused by these events;

to the extent feasible, taking into consideration available technologies, safety, cost, and other relevant factors.

(2) A permit term not to exceed **the following**:

(A) Five (5) years from the date of issuance for new permits.

(B) Ten (10) years from the date of issuance for permit renewals.

(3) Monitoring and related record keeping and reporting requirements ~~which that~~ assure that all reasonable information is provided to evaluate continuous compliance with the applicable requirements. At a minimum, the following shall be contained in each FESOP:

(A) Each FESOP shall contain the following requirements with respect to monitoring:

(i) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated under Section 504(b) or 114(a)(3) of the CAA.

(ii) Where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of record keeping designed to serve as monitoring, periodic monitoring specifications sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the FESOP, as reported under clause (C). ~~Such The~~ monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of this clause.

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(B) With respect to record keeping, the FESOP shall incorporate all applicable record keeping requirements, including, where applicable, the following:

(i) Records of required monitoring information that include the following:

(AA) The date, place, as defined in the FESOP, and time of sampling or measurements.

(BB) The dates analyses were performed.

(CC) The company or entity that performed the analyses.

(DD) The analytical techniques or methods used.

(EE) The results of ~~such the~~ analyses.

(FF) The operating conditions as existing at the time of sampling or measurement.

(ii) Retention of records of all required monitoring data and support information for a period of at least five

- (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes the following:
 - (AA) All calibration and maintenance records.
 - (BB) All original strip chart recordings for continuous monitoring instrumentation.
 - (CC) Copies of all reports required by a FESOP.
 - (DD) For the purposes of complying with this subdivision, the permittee shall retain the records on-site for three (3) years and shall make them available upon request for the two (2) years following.
- (C) With respect to reporting, a FESOP shall incorporate all applicable reporting requirements and requirements for the following:
 - (i) Submittal of reports of any required monitoring at least every six (6) months. All instances of deviations from FESOP requirements must be clearly identified in ~~such~~ **the** reports. All required reports must be certified by an authorized individual consistent with section 3(d) of this rule.
 - (ii) The reporting of deviations from FESOP requirements, including those attributable to upset conditions as defined in a FESOP permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Proper notice submittal under section 12 of this rule satisfies the reporting requirements of this item. Notwithstanding requirements in this section, the reporting of deviations required by an applicable requirement shall follow the schedule stated in the applicable requirement.
- (4) A severability clause to ensure the continued validity of the various FESOP requirements in the event that a portion of the FESOP is determined to be invalid.
- (5) Provisions stating the following:
 - (A) The permittee must comply with all conditions of the FESOP. Noncompliance with any provision of a FESOP is grounds for **the following**:
 - (i) Enforcement action.
 - (ii) FESOP termination, revocation and reissuance, or modification. ~~and~~
 - (iii) Denial of a FESOP renewal application.
 - (B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of a FESOP.
 - (C) The FESOP may be modified, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a FESOP modification, revocation and reissuance, or termination or of a notification of planned changes or anticipated noncompliance does not stay any FESOP condition.
 - (D) The FESOP does not convey any property rights of any sort or any exclusive privilege.
 - (E) The permittee shall furnish to the commissioner, within a reasonable time, any information that the commissioner may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating a FESOP or to determine compliance with a FESOP. Upon request, the permittee shall also furnish to the commissioner copies of records required to be kept by a FESOP, or, for information claimed to be confidential, the permittee may furnish ~~such~~ **the** records directly to the U.S. EPA along with a claim of confidentiality.
- (6) A provision to ensure that a FESOP source pays fees to the commissioner consistent with the fee schedule approved under section 16 of this rule.
- (7) Terms and conditions ~~which~~ **that** allow for changes by the FESOP source among reasonably anticipated operating scenarios that are identified by the source in its application as approved by the commissioner. ~~Such~~ **The** terms and conditions shall:
 - (A) require the source, contemporaneously with making a change from one (1) operating scenario to another, to make a record in a log at the permitted facility of the scenario under which it is operating; and
 - (B) for each such alternative operating scenario, require compliance with all applicable requirements and the requirements of this rule.
- (8) Terms and conditions, if a FESOP applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. ~~Such~~ **The** terms and conditions **shall**:
 - (A) ~~shall~~ include all terms required under section 5 of this rule to determine compliance; and
 - (B) ~~shall~~ require compliance with all applicable requirements and requirements of this rule.
- (9) A provision that requires the source to do all of the following:
 - (A) Maintain on-site the preventive maintenance plan required under section 3(c)(6) of this rule.
 - (B) Implement the preventive maintenance plan.
 - (C) Forward to the department upon request the preventive maintenance plan.
- (10) Descriptive information.
- (11) Terms and conditions, if requested by the permit applicant, that allow for changes at the permitted source, that comply with a federally enforceable emissions cap established in accordance with [326 IAC 2-1.1-12](#) and section 15(b) of this rule. ~~Such~~ **The** terms and conditions shall:
 - (A) include all terms required under subdivision (3) and section 5 of this rule to determine compliance with

the emission cap limit, all associated applicable requirements, and all terms required under section 15(a) and 15(b) of this rule;

(B) include a federally enforceable emissions cap, which may be independent of otherwise applicable requirements, with which the source must comply;

(C) require the permittee to meet all applicable requirements and all requirements of this rule;

(D) allow construction of new emission units or reconstruction or modification to existing emission units or processes that would otherwise require an operating permit revision, provided the actual emissions from the emission units or processes specified under an emissions cap or to be included under the emissions cap do not exceed the emissions limitation for the cap;

(E) allow for emissions trading solely for the purposes of complying with the emissions cap, provided the emissions cap request contains adequate terms and conditions, including all terms required under subdivision (3) and section 5 of this rule to determine compliance with the cap and with any emissions trading provisions;

(F) contain replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to the cap are quantifiable and enforceable;

(G) be established in accordance with the procedures ~~pursuant to~~ **under** sections 13 and 14 of this rule; and

(H) require the owner or operator to provide notice for those changes that would have otherwise required a minor or significant operating permit revision in accordance with section 15(b) of this rule.

(12) Terms and conditions, if requested by the permit applicant, that, notwithstanding the permit revision requirements under section 11.1 of this rule, allow the source to make specifically identified modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications ~~which that~~ may occur during the term of the permit. ~~Such~~ **The** permit conditions shall include the following:

(A) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(B) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(Air Pollution Control Board; [326 IAC 2-8-4](#); filed May 25, 1994, 11:00 a.m.: 17 IR 2272; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2356; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1051; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107)

[Notice of Public Hearing](#)

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