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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #07-351

**DEVELOPMENT OF RULES CONCERNING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rule [326 IAC 8-15](#) concerning emissions of volatile organic compounds from consumer and commercial products in Indiana. 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 8-15](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

In the April 30, 2004, Federal Register (69 FR 23858), the U.S. EPA designated the following 23 counties: Allen, Boone, Clark, Delaware, Dubois, Elkhart, Floyd, Greene, Hamilton, Hancock, Jackson, Johnson, Lake, LaPorte, Madison, Marion, Morgan, Porter, Shelby, St. Joseph, Vanderburgh, Vigo, Warrick, and Lawrenceburg Township in Dearborn County as nonattainment for the eight-hour ozone National Ambient Air Quality Standard (8-hour ozone standard), which is designed to protect human health and the environment. Since that time, all monitoring locations in Indiana have met the 8-hour ozone standard and IDEM is working with U.S. EPA to have the 23 counties redesignated to attainment. The Cincinnati, Ohio metropolitan area has not yet attained the 8-hour standard and IDEM has prepared a state implementation plan (SIP) revision for Lawrenceburg Township which addresses its contribution to Cincinnati's ozone nonattainment.

While all monitored portions of Indiana have attained the current 8-hour ozone standard, it is prudent for Indiana to consider implementing additional cost-effective measures to reduce emissions that contribute to the formation of ozone. The reasons for considering additional reductions include: the narrow margin between Indiana's current air quality and the current standard, the fact that the U.S. EPA is in the process of reevaluating the 8-hour ozone standard and will likely lower it, and the concerns expressed by other states that emissions from Indiana are contributing to their inability to attain the standard (the Clean Air Act provides a legal mechanism for those states to require Indiana to reduce Indiana's potential contribution to nonattainment in other states).

Indiana has been working with other states on a suite of measures to be considered by each of these states to reduce our mutual contribution to ozone formation in the upper Midwest and the eastern United States. These measures include regulation of volatile organic compounds (VOC) from: automotive refinishing; architectural and industrial maintenance coatings; consumer and commercial products (the subject of this notice); organic solvent degreasers; and stage I vapor recovery from gasoline dispensing facilities. In general, these proposed regulations would expand regulations that already exist in parts of Indiana and other states to cover all similar emissions from each of the participating states. The potential benefits of this coordinated action include improved Indiana and regional air quality that may prevent future nonattainment designations if the U.S. EPA tightens the ozone standard, an improved margin of safety between current Indiana air quality and the current standard, and the reduced likelihood of the need to impose more costly emission reduction measures in the future.

Consumer and commercial products are those items sold to retail customers for personal, household, or automotive use along with products marketed by wholesale distributors for use in commercial or institutional settings such as beauty shops, schools, and hospitals. VOC emissions from these products are the result of the evaporation of propellant and organic solvents during use. Consumer and commercial products include personal care products, household, automotive products, adhesives, and sealants, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) related insecticides, coatings (except architectural and maintenance), and other miscellaneous products.

The U.S. EPA published the federal consumer and commercial products (CCP) rule on September 11, 1998 (40 CFR Part 59, Subpart C) under the authority of Section 183(e) of the Clean Air Act. This rule limits the VOC content of 24 consumer product categories representing 47% of the consumer and commercial products inventory nationwide and requires all regulated products manufactured after December 10, 1998, to meet VOC content limits. The federal CCP rule is estimated to yield VOC reductions of 9.7% from 24 consumer product categories representing 48% of the consumer and commercial product inventory nationwide. The U.S. EPA will propose amendments to the CCP rules in June 2007 with final rules expected at the end of the year. These rules will be based on the ozone transport commission (OTC) model rule.

The OTC was created under the Clean Air Act and is responsible for advising the U.S. EPA on transport issues, with development and implementation of regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. It includes 12 states from Virginia to Maine and the District of Columbia. This commission formed a workgroup to consider a model rule to reduce VOC emissions in consumer and commercial products. To date, nine of the 13 members have an effective rule in place, including Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia. The other four members are in the process of considering or adopting the OTC model rule. However, Illinois, Michigan, Ohio, and Wisconsin have committed to adopt the OTC model rule.

Since over half of the U.S. consumer and commercial products inventory is unregulated by the federal CCP rule, the OTC developed a model rule for consumer and commercial products in 2000 to regulate additional consumer product categories with more stringent VOC content limits than the federal CCP rule. The OTC model rule regulates approximately 80 consumer and commercial product categories and includes technologically feasible VOC content limits. The emission reductions for the OTC model rule are estimated to be 14.2% of the total product inventory beyond the federal CCP rule reduction. The OTC model rule includes regulatory flexibility provisions for innovative products and alternative control plans.

VOC emissions reductions can be obtained through product reformulation to obtain a lower VOC content. The product reformulation options vary with each product category and can involve: (1) replacing VOC solvents with a water-based reformulation; (2) replacing VOC solvents with acetone or another exempt solvent; (3) increasing the solids content of the product; (4) formulating a non-VOC propellant; or (5) changing the valve, container, or delivery system to reduce VOC content. The regulatory approach for reducing emissions is to establish VOC content limits for specific coatings that manufacturers are required to meet either through reformulating products or substituting products with compliant products.

#### **Alternatives To Be Considered Within the Rulemaking**

Alternative 1. Adopting the OTC model rule that has additional product coverage and more stringent VOC limits than the federal rule.

1. Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, it is not an incorporation by reference of a federal standard.
2. Is this alternative imposed by federal law or is there a comparable federal law? No, this alternative is not imposed by federal law, but there is a comparable federal law under 40 CFR Part 59, Subpart C that regulates fewer product categories with less stringent emission reduction requirements. U.S. EPA gives Indiana the flexibility to select appropriate alternatives in order to meet the requirements of the federal law in a timely manner. This alternative exceeds the VOC emission standards of 40 CFR 59, Subpart C.
3. If it is a federal requirement, is it different from federal law? Not applicable.
4. If it is different, describe the differences. Not applicable.

Alternative 2. Wait for the U.S. EPA to issue their final amended rule under 40 CFR 59, National Volatile Organic Compound Emission Standards for Consumer and Commercial Products, prior to preparing the Second Notice of Rulemaking.

1. Is this alternative an incorporation of federal standard, either by reference for full text incorporation? Yes, this alternative would be a full text incorporation of a federal standard.
2. Is this alternative imposed by federal law or is there a comparable federal law? This alternative includes the current federal law and future amendments.
3. If it is a federal requirement, is it different from federal law? No.
4. If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes) are both applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38856)) contains the standards for criteria pollutants. Ozone is considered a criteria pollutant, and air pollution controls reduce emissions of VOC to reduce ozone formation. 40 CFR 81 (amended on April 30, 2004 (69 FR 23858)) lists the areas of the United States, specific to each state that are not attaining the standards (nonattainment) for criteria pollutants such as ozone. 40 CFR 59, Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products provides the minimum level of VOC emission control required to comply with federal law.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. The OTC model rule estimates a 14.2% reduction in VOC emissions beyond the federal CCP rule at an estimated cost of \$800 per ton controlled.

Potential Fiscal Impact of Alternative 2. The U.S. EPA rule will closely follow the OTC rule so the VOC emission reductions and estimated costs should follow closely with Alternative 1.

#### **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/ctap](http://www.in.gov/idem/ctap)

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

Christina Lowry  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 North Senate Avenue  
IGCS W-041  
Indianapolis, IN 46204-2251  
(317) 234-1191  
[clowry@idem.in.gov](mailto:clowry@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
MC50-01-IGCN 1307  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[spfeffer@idem.in.gov](mailto:spfeffer@idem.in.gov)

### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for this rulemaking, but the department is planning outreach efforts to affected sources during the course of the rulemaking and to provide compliance assistance. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#07-351(APCB) VOC-Consumer products  
Suzanne Whitmer 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 IDEM receptionist on duty at the Tenth Floor-East Wing reception desk, Office of Air Quality, Indiana Government Center-North, 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 July 27, 2007.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Section, Office of

Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Patricia Troth, Chief  
Rules Development Section  
Office of Air Quality

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