
TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-372

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CORRECTIONS AND CLARIFICATIONS TO PERMIT RULES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2](#) concerning air permits. The amendments will include corrections, clarifications, and resolution of consistency issues, including revisions required or suggested by the United States Environmental Protection Agency (U.S. EPA). 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](#).

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

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

U.S. EPA has identified revisions needed for federal approval of amendments to the Title V Permit Program and the minor new source review rules, and amendments resulting from litigation of the federal New Source Review Reform regulation. U.S. EPA has also made several suggestions for revisions for clarity and consistency. Other revisions necessary for federal approval of Indiana's air permit programs or changes to federal permit rules may be identified in the course of this rulemaking and may also be addressed.

Title V Permit Program

On March 20, 2002, IDEM submitted amendments to Indiana's Title V Program to U.S. EPA, Region V. U.S. EPA has identified various concerns with Indiana's definition of "insignificant activity" in the Title V permit program rules at [326 IAC 2-7-1](#)(21). IDEM made a commitment to U.S. EPA to clarify the language in order to obtain federal approval of the program and proposes to make the necessary changes in this rulemaking. U.S. EPA also made suggestions for other changes to the definition of "insignificant activity" that will be considered. Examples of proposed changes include the following:

- A limit on operating hours for emergency generators in [326 IAC 2-7-1](#)(21)(G)(xxii)(BB) that are considered insignificant.
- Clarification in [326 IAC 2-7-1](#)(21)(G)(vi)(CC) that degreasing activities that include one ton per year or more of a hazardous air pollutant (HAP) are not insignificant.
- Addition of a time frame for bridge fabrication under [326 IAC 2-7-1](#)(21)(G)(vi)(II).

U.S. EPA also has identified issues related to the minor new source review (minor NSR) SIP submittal that will impact approval of the Title V Program if not amended. In particular, references to the emission cap provisions in [326 IAC 2-1.1-12](#) must be removed.

Minor New Source Review

On February 3, 1999, IDEM submitted amendments to Indiana's minor NSR rules. U.S. EPA has identified concerns with certain provisions that impact the minor NSR rules at [326 IAC 2](#) that must be changed before federal approval will be granted. IDEM is proposing to make the necessary revisions through this rulemaking and is continuing to work with U.S. EPA to determine if any additional issues that affect approvability need to be addressed. IDEM proposes to include any additional amendments that are required for federal approval in this rule. Examples of proposed changes related to the minor NSR SIP submittal include the following:

- In [326 IAC 2-1.1-3](#)(e), clarify that modifications subject to both [326 IAC 2-2](#), Prevention of Significant Deterioration, and [326 IAC 2-3](#), Emission Offset, are excepted from this subsection.
- Remove the confusing phrase, "when subject only to specific emission limits contained in this title" and clarify the intent of the provisions in [326 IAC 2-1.1-3](#)(h)(2).
- Remove the emission cap provisions in [326 IAC 2-1.1-12](#) and all references to it in the permitting rules.

New Source Review Reform

On December 31, 2002, U.S. EPA published revisions to the federal Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. The revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PAL), clean units, and pollution control projects (PCP). Indiana adopted the NSR Reform rules and submitted a request for a state implementation plan (SIP) revision to U.S. EPA on September 2, 2004. On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on

challenges to the December 2002 NSR Reform revisions that vacated both the clean unit and the PCP provisions. In addition, the Court remanded to U.S. EPA the provision that requires recordkeeping and reporting for sources that elect to use the actual-to-projected actual emission test only where there is a reasonable possibility that a project may result in a significant net emissions increase. Indiana submitted revised requests to U.S. EPA requesting that no action be taken on the clean unit and PCP provisions and on the remanded provision.

On June 18, 2007, U.S. EPA published a partial approval of Indiana's NSR Reform revisions for rules to implement the NSR Reform provisions that have not been vacated by the June 24, 2005, court decision. Because the clean unit and PCP provisions of the rule have been vacated, IDEM proposes to remove them from Indiana's air permit rules. If U.S. EPA addresses the remanded "reasonable possibility" provision during this rulemaking, IDEM may also make changes consistent with U.S. EPA's action, if needed.

IDEM will also make revisions to Title V permit rules for consistency with federal rulemaking actions, such as the Compliance Assurance Monitoring (CAM) rule.

Corrections and Clarifications

In December of 1998, amendments to regulations in [326 IAC 2](#) concerning air permitting were promulgated that reorganized the rules and updated procedural requirements. The process for modifications, which had been in a separate section, was moved into the specific rules for the different operating programs. Some of the procedures were also revised at that time. Now that the regulations have been in effect for several years, it has become evident that there is a need for updating the rule language to reduce confusion and provide consistency in the air permitting rules in [326 IAC 2](#).

This rulemaking potentially could impact anyone required to obtain an air permit in Indiana. Both industry and the public will benefit from the clarifications and corrections to be made by providing language that is easier to understand. Revisions to the rules that enable U.S. EPA to approve rules will provide consistency between state and federal requirements.

IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Make revisions required for federal approval of an air permit program.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes, some of the changes are a full text incorporation of federal standards.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, some of the changes are required, but are not a direct incorporation of a federal standard.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Make revisions suggested by U.S. EPA for clarity and consistency with federal regulations.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, but this alternative will provide state rule language that is clear and consistent with federal requirements.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Make corrections and clarifications identified by IDEM staff and interested parties.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans); 40 CFR 52 (Approval and Promulgation of Implementation Plans); 40 CFR 60 (Standards of Performance for New Stationary Sources); 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants); 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories); 40 CFR 70 (State Operating Permit Programs)

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative is not anticipated to have a significant fiscal impact because the changes are already required and the changes are to provide clarity and consistency.

Potential Fiscal Impact of Alternative 2. This alternative is not anticipated to have a significant fiscal impact because the changes are already required and the changes are to provide clarity and consistency.

Potential Fiscal Impact of Alternative 3. This alternative is not anticipated to have a significant fiscal impact because the changes are already required and the changes are to provide clarity and consistency.

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:

Christine Lowry
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 234-1191
clowry@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC 50-01--IGCN 1307
100 N. Senate Ave.
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 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:

#07-372(APCB) Air Permits Corrections and Clarifications
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 IDEM receptionist on duty at the tenth floor 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 August 17, 2007.

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).

Pat Troth, Chief
Rules Development Section
Air Programs Branch
Office of Air Quality

Posted: 07/18/2007 by Legislative Services Agency
An [html](#) version of this document.