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**TITLE 326 AIR POLLUTION CONTROL BOARD**

**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #07-202

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REVIEW TIMES FOR RENEWALS TO MINOR SOURCE OPERATING PERMITS AND MINOR PERMIT MODIFICATIONS TO PART 70 OPERATING PERMITS**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 2](#) concerning review and action on renewals to Minor Source Operating Permits (MSOPs). IDEM will not be pursuing revisions to minor permit modifications to Part 70 operating permits. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**HISTORY**

First Notice of Comment Period: April 18, 2007, Indiana Register (DIN: [20070418-IR-326070202FNA](#)).

**CITATIONS AFFECTED:** [326 IAC 2-6.1-7](#).

**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**

The permitting rules at [326 IAC 2](#) include time periods for determinations made by IDEM on permit applications. The rules give IDEM a certain number of days to make a final decision on each type of permit application. IDEM has found that these time periods do not provide sufficient time for appropriate review and action on renewals to Minor Source Operating Permits (MSOPs). In the First Notice of Comment Period, IDEM considered an increase to the review time for minor permit modifications to Part 70 operating permits. However, based on comments received and further discussion internally and with the United States Environmental Protection Agency (U.S. EPA), IDEM has determined that this increase will not be necessary and has removed it from this rulemaking.

Applicants for the renewal of a MSOP must submit the renewal application at least 90 days prior to the expiration of the existing permit in accordance with [326 IAC 2-6.1-7](#). [IC 13-15-4-1](#)(b) requires IDEM to issue renewal permits before the expiration date of the existing permit if a timely and sufficient application for renewal has been made. Therefore, once an application to renew a MSOP is received, IDEM has only 90 days to complete its review of the application; prepare the draft permit; allow the source time to review the draft permit and suggest changes; put it on public notice; review comments, questions, and suggested changes; and issue the final permit. IDEM permitting staff have found this to be insufficient time to complete these activities; therefore, IDEM is proposing to extend the time to act on these applications to 120 days.

Extending the time in which IDEM makes a permit decision is not expected to significantly impact an affected MSOP source; however, renewal applications would have to be submitted 30 days sooner than under the current rules. A MSOP source that submits a timely renewal application is allowed to continue operating until IDEM makes a final decision on the renewal application.

IDEM is proposing to increase the time period for making determinations on Minor Source Operating Permit (MSOP) renewals from 90 days to 120 days in [326 IAC 2-6.1-7](#). IDEM seeks comments on amendments to this time period for making determinations on MSOP permit applications.

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

The following 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" (NIFL element).

The following information is provided with each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana and examples in which federal law is inadequate to provide this protection for Indiana.
- (2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.
- (3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable, health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element A: Increase the review time for MSOP renewals from 90 days to 120 days in [326 IAC 2-6.1-7](#).

(1) This amendment will provide additional time for IDEM permitting staff to handle the activities necessary to process a MSOP renewal. Federal law does not address these types of permits.

(2) There will be no fiscal impact from this proposed revision; however, it will provide sufficient time for IDEM permitting staff to process MSOP renewals.

(3) Information used for the development of this draft rule was obtained from the Office of Air Quality Permitting Branch, including statistical information on MSOP permit renewals.

### **Potential Fiscal Impact**

There will be no fiscal impact caused by this rulemaking. Sources seeking to renew MSOPs will be required to submit the renewal application 120 days prior to expiration of the old permit rather than 90 days; however, this rule does not change the fee. IDEM permitting staff will have 30 additional days to complete the review and processing of the renewal.

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

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 Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6021 (in Indiana).

### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from April 18, 2007, through May 18, 2007, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Bingham McHale (BMH)

Eli Lilly and Company (ELC)

Indiana Manufacturers Association, Inc. (IMA)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* We disagree with this proposed amendment. Before starting a rulemaking, IDEM should present statistical information about the number and types of permit modifications it has issued, and the amount of time it is taking to issue those permit modifications. This data would help the regulated permittees understand the context of this proposal, and it will enable everyone to make better decisions.

For example, the data might show a large number of significant permit modifications and a low number of minor permit modifications. If that were true, then IDEM and permittees could explore the reasons for this. If this were the case, is it because there simply aren't many permit modifications eligible for minor permit modification, or is it because the agency is conservatively applying the permit modification criteria and deciding most modifications are significant? Or, is the root cause regulatory and internal metrics and deadlines that drive permit review staff to require significant permit modifications because the rules and internal metrics allow staff more time for the reviews? We don't know the answers to these questions until we see some data to understand how the program is being implemented. IDEM and the regulated community should use the data to develop better policy solutions. (ELC)

*Comment:* We request more information in connection with the rulemaking. During the rulemaking, the APCB and the public should receive a report from IDEM describing the scope of MSOP renewals and Part 70 permit modifications. The review activity, including the number of permits being reviewed, the number and type of permit modifications occurring, and the time required to process these requests would be beneficial. Special consideration should be given to the low number of permit modifications that are categorized as minor. (IMA).

*Response:* IDEM has decided not to pursue changes to the review time for Part 70 minor permit modifications. Over the past 3 years, IDEM has issued 85 MSOP renewals in an average of 326 calendar days. The minimum number of days was 70 and the maximum was 1049.

Though the calendar days have often been over 120 days in the past, IDEM is currently working to remove a backlog of renewals and is also improving permit renewal processing time. It is IDEM's goal to issue each MSOP renewal within 120 days and prior to expiration of the source's current MSOP when the renewal application is timely and complete.

*Comment:* Lilly objects to this proposal because it substantially lengthens the amount of time that a source is operating in a state of uncertainty. The current rules allow the source to make the change that triggers the minor permit modification as soon as the source submits its application to IDEM. At that point, the source understands that if it proceeds with making the change it has approximately 90 days of uncertainty where IDEM and U.S. EPA could disagree with the source's proposed permit modification.

If IDEM's review period for minor permit modifications is extended to 165 days, then the source faces nearly six months of uncertainty about what its permit will require. That amount of time is long enough that sources are more likely to choose not to proceed with its changes because the potential compliance or economic consequences of the agencies disagreeing with the proposal are too high. If the source chooses to wait for IDEM to issue the permit modification, the delay may create other compliance or economic issues for the source. Extending the agency review time to 165 days will create a chilling effect for sources who want to make changes.

(ELC)

*Comment:* Increasing the review period for minor permit modifications for Part 70 permits would constrain a key component of Indiana's minor permit modification program, the ability to make changes at the time of application. The existing minor permit modification review period limitations in 40 CFR 70.7(e)(2)(iv) and [326 IAC 2-7-12\(b\)\(6\)](#) take into consideration the nature of the types of modifications that qualify as minor permit modifications and the need for sources to be able to make modifications quickly to remain competitive. Since [326 IAC 2-7-12\(b\)\(7\)](#) permits sources to make proposed minor permit modifications after submitting a minor permit modification application, increasing the review period would extend the time period in which sources await confirmation that the already implemented modification is approved. Thus, increasing the review period would discourage sources from implementing much needed changes at the time the application is submitted, which is not good for business in Indiana. (BMH)

*Comment:* Lilly also objects to increasing the time period for review to 165 days because it would make the state rules significantly more stringent than the comparable federal rules and other state rules. 40 CFR 70.7(e)(2)(iv) provides that minor permit modifications should be reviewed in 90 days or after the end of the EPA 45-day review period, whichever is later. EPA established this time frame in order to balance the needs of the sources making the changes, the public interest in changes, and the resources and effort needed by permitting authorities. Section 502(b)(6) of the Clean Air Act Amendments of 1990 requires the Title V permitting rules to include "expeditious review of permit actions". Lilly believes that the proposed 165 day review period for minor permit modifications is not "expeditious". (ELC)

*Comment:* The IMA opposes IDEM's proposal to extend the agency's review time for Title V minor permit modifications from 90 days to 165 days. This proposal is significantly more stringent than the U.S. EPA requirements for minor permit modifications. 40 CFR 70.7(e)(2)(iv) requires a permitting authority to issue minor permit modifications within 90 days of receiving an application or 15 days after the end of U.S. EPA's review period, whichever is later. (IMA)

*Comment:* The proposed increase of the review period for minor permit modifications for Part 70 permits contradicts 40 CFR 70.7(e)(2)(iv). Pursuant to 40 CFR 70.10(c)(ii), U.S. EPA may withdraw program approval whenever the program no longer complies with the requirements of 40 CFR 70 and the permitting authority fails to take corrective actions, including for failure to act in a timely way on applications for permits. (BMH)

*Comment:* Increasing the review period for minor permit modifications would put Indiana companies at a competitive disadvantage to companies in other states. Since 40 CFR 70.7(e)(2)(iv) mandates the review period for minor permit modifications, Indiana's review period would be longer than other permit authorities. The CASE Coalition urges IDEM to consider the full costs to Indiana's economy imposed by such changes, including the costs related to the competitive disadvantage Indiana businesses will face from longer permit review time periods, the administrative costs associated with addressing any response from U.S. EPA, not to mention the potential costs associated with a change in IDEM's program approval status. Moreover, prior to moving forward with an increase in the minor permit modification review time period, IDEM should consider whether any unnecessary administrative steps could be eliminated from its review process. (BMH)

*Comment:* Increasing the review period for minor permit modifications is not necessary because [326 IAC 2-7-12\(b\)\(6\)](#) already provides flexibility in processing minor permit modifications. The existing rules already provide for additional review time should revisions become necessary following the public notice and comment period. Pursuant to [326 IAC 2-7-12\(b\)\(6\)](#) and [326 IAC 2-7-18\(b\)\(3\)](#), it is clear that if IDEM has to make revisions to the public noticed minor permit modifications, IDEM must: (1) submit those revisions to U.S. EPA within ninety (90) days of receipt of the application; (2) wait for U.S. EPA to complete its forty-five (45) day review; and (3) act on the permit application within fifteen (15) days after the end of U.S. EPA's forty-five (45) day review. Therefore, extra time to address issues raised on public notice has already been incorporated into existing rules, and IDEM is not required under these circumstances to issue or deny the permit within ninety (90) days of receipt of the application. (BMH)

*Response:* Based on the comments received and further discussion internally and with U.S. EPA, IDEM has decided not to pursue any change to the review time for Part 70 minor permit modifications. The current rule language provides for additional time after the U.S. EPA 45 day review.

*Comment:* The best way for IDEM to be able to meet the 90 day review period established in the federal rules would be for IDEM's minor permit modification requirements to match the federal process for minor permit modifications. Accordingly, IDEM should consider removing the public notice and 30 day comment process for minor permit modifications since it is not required by the Part 70 regulations. While Lilly does not object to its permits and permit modifications undergoing a public review process, we do believe there are certain permit modifications that do not warrant lengthy comment periods. Minor permit modifications should be evaluated for the appropriate level of public notice and comment, and IDEM should explore other options for notifying and involving the public. (ELC)

*Comment:* The underlying cause for IDEM to need more time is that IDEM's permit rules require public notice and comment for minor permit modifications ([326 IAC 2-7-12\(b\)\(4\)](#)). The U.S. EPA Part 70 rules do not have this requirement. Instead of lengthening IDEM's review period for minor permit modifications, IDEM should eliminate

the unnecessary public notice and comment provisions for minor permit modifications. This would make IDEM's rules consistent with the U.S. EPA rules. (IMA)

*Response:* Based on comments received and internal discussion, IDEM will not pursue a change to the review time for Part 70 minor permit modifications. Eliminating the public notice process for Part 70 minor permit modifications would also require the removal of the permit shield in [326 IAC 2-7-15](#) for Part 70 minor permit modifications. IDEM is interested in receiving comments concerning the value of the public notice process and the permit shield for Part 70 minor permit modifications. If the comments received support elimination of the public notice process for Part 70 minor permit modifications, IDEM may pursue that change in a new rulemaking.

*Comment:* IDEM's request to lengthen the time period for minor permit modifications raises many questions about how IDEM should administer the Title V program, in particular the methods and procedures for revising Title V permits as the source and regulatory requirements change. Lilly suggests that IDEM review the recommendations of the U.S. EPA Title V Task Force on improving the permit management process. Section 5.7 of the report, which can be obtained on the internet at:

[http://www.epa.gov/air/caaac/tvtaskforce/title5\\_taskforce\\_finalreport20060405.pdf](http://www.epa.gov/air/caaac/tvtaskforce/title5_taskforce_finalreport20060405.pdf)

included numerous recommendations for improving the efficiency and timing of the permit revision process.

In light of the Title V Task Force's recommendations, Lilly suggests that IDEM consider revising its rules to adopt and implement the so-called "off-permit" procedures described in 40 CFR 70.4(b)(14). This "off-permit" process, which was left out of the Indiana Title V program rules, was found by the Task Force to be an effective and efficient means of updating permits when other procedures are used to establish the requirements. If used appropriately, the off-permit process could enable IDEM's staff and resources to work on more time-consuming permit revisions, and this would reduce the review time for those permit revisions.

The Task Force recommended that a state should broaden the scope of the types of changes eligible for administrative permit amendments in the state permit program rules. EPA's Title V rules allow broader inclusion for administrative permit amendments as long as they are approved by EPA. More frequent use of the administrative permit amendment could also free up IDEM staff time to focus on other permit revisions. (ELC)

*Response:* IDEM is preparing to evaluate the air permitting process for effectiveness and efficiency and will keep this information in mind during the process.

## 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 draft rule. Mailed comments should be addressed to:

#07-202(APCB) MSOP Renewal Review Times  
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 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 Development Section at (317) 233-0426.

## COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 26, 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).

## DRAFT RULE

SECTION 1. [326 IAC 2-6.1-7](#), PROPOSED TO BE AMENDED AT [20070328-IR-326060487PRA](#), SECTION 2, 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) A:

- (1) new operating permit shall be valid for a period of time not to exceed five (5) years; and a
- (2) 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)~~ **one hundred twenty (120)** calendar days 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 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)*

#### [Notice of Public Hearing](#)

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