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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #08-208

**DEVELOPMENT OF AMENDMENTS TO RULES AT [326 IAC 16](#) CONCERNING ENVIRONMENTAL IMPACT STATEMENTS FOR MAJOR STATE ACTIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 16](#) concerning implementation of Indiana law regarding environmental impact statements for major state actions that may significantly affect the quality of the human environment. 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 16](#); [326 IAC 16.1](#).

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

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

[IC 13-12-4-5](#) requires all state agencies to use a systematic, interdisciplinary approach to ensure integration of natural and social sciences in planning and decision making that may impact the environment. It requires all state agencies to identify and develop methods and procedures that will ensure that unquantified environmental amenities and values be given consideration along with economic and technological considerations in decision making. Each state agency that plans or undertakes a major state action that significantly affects the quality of the environment is required to include a detailed statement by the responsible official that describes the environmental impact, any unavoidable adverse effects to the environment, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would be involved if the proposed action is implemented. The state agency proposing the action is required to consult with and obtain comments from each state agency that has jurisdiction or has special expertise regarding any potential environmental impact. Copies of the statement and the comments of appropriate federal, state and local agencies that are authorized to develop and enforce environmental standards shall be made available to the governor and public and must accompany the proposal through the agency review process.

Under [IC 13-12-4-5](#), the environmental boards are required to define in rules the actions that constitute a major state action significantly affecting the quality of the human environment.

[IC 13-12-4-8](#) exempts state licensing and permitting actions from the requirement to develop an environmental impact statement. [IC 13-12-4-10](#) excludes state agencies that are required to file a federal environmental impact statement under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. (NEPA) from the state environmental impact statement requirement.

The current rules at [326 IAC 16](#) (air pollution control board) provide a checklist to aid state agencies in determining whether the state action they are contemplating does in fact significantly affect the environment. The current rules also mirror the statutory requirements that all state agencies prepare environmental impact statements for major state actions. The rules have not been beneficial in helping agencies decide whether the action they may take is a major state action significantly affecting the quality of the human environment. IDEM wants to make the rules a useful tool for developing impact statements that can aid in the decision making process for major state actions.

The current rules at [326 IAC 16](#) apply specifically to Indiana state agencies that plan or engage in major state actions that may have a significant impact on the environment. Those rules were intended to provide guidance and specificity to state agencies by defining the scope of analysis that a major state action undertaken by that agency must be subjected to. The purpose of this rulemaking is to define "major state action significantly affecting the quality of the human environment".

**Alternatives To Be Considered Within the Rulemaking**

Alternative 1. Repeal existing rule language and define "major state action significantly affecting the quality of the human environment," as required under [IC 13-12-4-5\(2\)\(C\)](#). Place much of the criteria for decision making and issues to consider in determining environmental impact into guidance.

- 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? This rule is not imposed under federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Maintain the existing checklist-based rule, updated to require consideration of environmental concerns and duties that have increased in importance or been addressed in Indiana law since [326 IAC 16](#) was adopted in 1988.

- 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? This rule is not imposed under federal law.
- 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. Create a new evaluation system for state agencies to use when evaluating the environmental impact of their major state actions.

- 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? This rule is not imposed under federal law.
- 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**

The National Environmental Policy Act (NEPA) is comparable to Indiana statutory requirements for environmental impact statements. However, [IC 13-12-4-10](#) provides that any state agency that is required by NEPA to file a federal environmental impact statement is not required to comply with the Indiana environmental impact statement requirements unless the action contemplated requires state legislation or state appropriations. As a result, NEPA would not apply to actions covered by this rule.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of all alternatives: There is no fiscal impact to the regulated community with this rulemaking. These rules apply to state agencies which are statutorily required to consider environmental impact in decision making. The actual fiscal impact of this rulemaking depends upon the size of the project for which environmental impacts are being measured as well as the extent of the environmental impact. Fiscal impacts would be measured in the number of full-time equivalents necessary to complete an environmental assessment for each project.

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

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

Stacey Pfeffer

IDEM Compliance and Technical Assistance Program - OPPTA

MC 60-04 IGCS W-041

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8172 or (800) 988-7901

The Small Business Assistance Program Ombudsman is:

Megan Tretter

IDEM Small Business Assistance Program Ombudsman

MC 50-01 - IGCN 1307

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

[mtretter@idem.in.gov](mailto:mtretter@idem.in.gov)

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

An external workgroup will be established to discuss issues involved in this rulemaking. This workgroup will also encompass rules to be adopted by the Solid Waste Management Board and the Water Pollution Control Board. The workgroup will be made up of IDEM staff and a cross section of stakeholders. If you are interested in participating in this workgroup, please contact Susan Bem in the Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Susan Bem, Rules Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to

members of the workgroup who represent their particular interests in the rulemaking.

### **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:

#08-208(APCB) State Environmental Policy  
Susan Bem 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 May 2, 2008.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

*Posted: 04/02/2008 by Legislative Services Agency*

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