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**TITLE 326 AIR POLLUTION CONTROL BOARD****Proposed Rule**  
LSA Document #08-208**DIGEST**

Amends [326 IAC 16-1-2](#), [326 IAC 16-1-3](#), and [326 IAC 16-1-4](#) and adds [326 IAC 16-2.1](#) concerning implementation of Indiana law regarding environmental impact statements for major state actions that may significantly affect the quality of the human environment. Repeals [326 IAC 16-1-1](#), [326 IAC 16-1-5](#), and [326 IAC 16-2](#). Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: April 2, 2008, Indiana Register (DIN: [20080402-IR-326080208FNA](#)).  
Second Notice of Comment Period: October 22, 2008, Indiana Register (DIN: [20081022-IR-326080208SNA](#)).  
Notice of First Hearing: October 22, 2008, Indiana Register (DIN: [20081022-IR-326080208PHA](#)).  
Change in Notice of Hearing: February 25, 2009, Indiana Register (DIN: [20090225-IR-326080208CHA](#)).  
Date of First Hearing: April 1, 2009.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on October 22, 2008, at DIN: [20081022-IR-326080208SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from October 22, 2008, through November 21, 2008, on IDEM's draft rule language. IDEM received comments from the following parties:

Improving Kids' Environment (IKE)  
Sierra Club Hoosier Chapter (SC)

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

*Comment:* Indiana's environmental impact review law is based on the National Environmental Policy Act, 42 U.S.C. 4321 et seq., generally known as NEPA, which was passed in 1969. NEPA was the first major piece of federal environmental legislation. It reflected a recognition that federal agencies, before they took or funded major activities, should consider the potential environmental impacts of those activities and possible alternatives that would lessen those impacts. The law was based on a premise that environmental quality is important to humans and that legitimate public policy goals can be carried out in a way that is protective of environmental quality. The first step to achieving this is for agencies to consider and describe potential environmental impacts as they are planning their projects and activities and making their funding choices, and to do so in a way that allows other agencies and the public to participate in the process. Years after the passage of NEPA and Indiana's law based on it, consideration of potential environmental impacts remains important. (IKE, SC)

*Response:* IDEM agrees and believes that the update of these regulations will make the process easier and more transparent for agencies using the rules and interested persons.

*Comment:* Environmental impact statements can be a major benefit in assuring the public that government agencies are giving due consideration to the effects that their actions may have on the environment. It is laudable that the Air Pollution Control Board is willing to review its obligations under [IC 13-12-4-5](#) to define by rule "the actions that constitute a major state action significantly affecting the quality of the human environment" so that government agencies can fulfill their obligations under the law. (SC, IKE)

*Response:* IDEM believes the new definitions will be a benefit to agencies in determining the applicability of these regulations on agency activities.

*Comment:* [326 IAC 16-1-3](#)(e)(1) provides for categorical exemptions for minor state actions with an agency having the ability to develop a list of activities it proposes to consider as minor for purposes of this rule.

Categorical exemptions can be accepted if the rule requires each agency to include the public, as well as the governor and IDEM, in the opportunity to comment on the list of minor actions developed by the agencies. The public should be given opportunity to comment on the agencies' developed lists of minor actions before the lists are finalized. Therefore, please include the public at [326 IAC 16-1-3](#)(e)(1)(B)(i). (SC, IKE)

*Response:* This rulemaking does not prohibit an agency from seeking public comment on its minor actions list. Requiring specific public comment procedures of implementing agencies is beyond the statutory authority of this rule.

*Comment:* The rule needs to be more specific at [326 IAC 16-1-3](#)(e) on how notice should be provided to the

public. A suggestion would be that IDEM be responsible for publishing notices of the agencies' draft lists of minor actions in the Indiana Register, which is the expected location for actions of this type to be published. (IKE)

*Response:* IDEM is not responsible for the lists. The agencies that develop the lists are responsible for development, consultation with IDEM and the governor and providing public notice to interested parties under the amended language. IDEM was removed as a repository for the lists under the amended language because, by statute, each agency must determine when these regulations apply to it, not IDEM.

*Comment:* While it is appropriate for IDEM to assist other state agencies in developing procedures for performing environmental assessments and environmental impact statements, the requirement for "a state form for environmental assessment" in [326 IAC 16-1-4](#) and the definition of "environmental assessment" at [326 IAC 16-2.1-3](#) may suggest to agencies that the assessment is only a cursory summary of the proposed action. IDEM should provide guidance for both types of review, not simply provide a form for assessments. (SC, IKE)

*Response:* IDEM intends to develop more extensive guidance on both assessments and impact statements with the aid of other agencies that must implement these regulations. The form was previously in the rule itself and it was thought more appropriate to make it an actual state form which can be updated more regularly than the rule itself.

*Comment:* The state law, [IC 13-12-4-5](#), does not specify exact procedures for agencies to follow in implementing the environmental review program although good models exist at the federal level and from a variety of other state laws. In addition to IDEM providing guidance to its sister agencies on procedures to follow so there is both clarity and consistency for agencies that are not as familiar with environmental issues, the rule should provide opportunities for public input into the development of that guidance. The workgroup IDEM has established for this rulemaking would be an appropriate vehicle for that input. (IKE)

*Response:* IDEM agrees that the workgroup process is valuable in developing topics for guidance as well as procedures helpful to those implementing these rules. The rule itself is not the appropriate place to import public procedures for the development of guidance without additional statutory authority.

*Comment:* [326 IAC 16-1-4](#)(b) describes procedures for developing an environmental impact statement; yet, it is contained in a section entitled "General considerations for preparing environmental assessment forms". The rule should have a separate section on preparing environmental impact statements and this new section should contain explicit language that states that the public will have an opportunity to comment on draft environmental impact statements before they become final. (SC)

*Response:* The Indiana Environmental Policy Act does not provide for public comment on environmental impact statements, only public notice, [IC 13-12-4-5](#). Although this rulemaking is not intended to place any additional requirements on implementing agencies beyond those already required by statute or the current rule, there is nothing that prohibits implementing agencies from accepting public comment should they choose to do so.

*Comment:* It is critical that IDEM give agencies guidance on how to notify the public of proposed actions that will or may require an environmental impact statement and give the public an opportunity to comment on the issues to be considered in the statement and on the adequacy of the statement once it is produced. (IKE)

*Response:* The Environmental Policy Act requires public notice by each agency of environmental impact statements under [IC 13-12-4-5](#). The authority for this rulemaking does not extend to developing public notice procedures for implementing agencies. It is up to each agency to determine how it must comply with state law as well as these regulations.

*Comment:* The word "briefly" should be deleted from [326 IAC 16-2.1-3](#)(a)(1) because the discussion in an environmental assessment needs to be sufficiently detailed for the agency and the public to reach a judgment about the significance of the potential impacts. Additionally, a fourth subdivision should be added under [326 IAC 16-2.1-3](#)(a) to read as follows:

"(4) Informs the public of the reasons for the agency's decision if it determines that no environmental impact statement is necessary."

(SC, IKE)

*Response:* The definition is taken from NEPA, Section 1508.9. An assessment is meant as the first step in determining whether a more exhaustive impact statement is necessary, thus the use of the term "brief". Adding public notice requirements to a definition is not the correct place to do so nor is it required under the existing Indiana Environmental Policy Act. This rulemaking does not seek to impose additional requirements on implementing agencies beyond those required by statute and the current rules.

*Comment:* The definition of "environmental impact statement" should include language stating that the agency must solicit public comments before the environmental impact statement becomes final. (SC)

*Response:* Adding public notice requirements to a definition is not the correct place to do so. This rulemaking does not seek to impose additional requirements on implementing agencies beyond those required by statute and the current rules. Under [IC 13-12-4-5](#), environmental impact statements must be made available to the public. Nothing prohibits implementing agencies from seeking public comment on draft environmental impact statements.

*Comment:* The word "potential" should be added before "environmental impacts" at [326 IAC 16-2.1-4](#)(1). (IKE)

*Response:* IDEM agrees and has included the change in the draft rules.

*Comment:* The draft language at [326 IAC 16-2.1-4\(3\)](#) should be extended with the additional words, "including the no action alternative." Discussion of the "no action" alternative is routinely required under federal NEPA and is important because it allows the agency and the public to consider the potential impacts of the proposed project in comparison to the option of not doing the project at all. (IKE, SC)

*Response:* [IC 13-12-4-5\(2\)\(C\)](#), from which the language was taken, includes a requirement that agencies consider, "[a]lternatives to the proposed action." when developing an environmental impact statement. This broad language could encompass a "no action" alternative, should implementing agencies choose to include such a discussion. However, there is no specific statutory direction to require a discussion of a "no action" alternative and this rulemaking was not intended to impose additional requirements on implementing agencies beyond those required in statute. It may be appropriate in guidance to clarify that a discussion of alternatives could also include a "no action" alternative and the implications thereof in an environmental impact statement.

*Comment:* The language used at [326 IAC 16-2.1-4\(4\)](#) is taken from [IC 13-12-4-5](#), but the meanings are obscure. [326 IAC 16-2.1-4\(4\)](#) requires a description of "the relationship between local, short-term uses of the environment and the maintenance of long-term productivity." Does this mean the productivity of the environment or is it a reference to economic productivity? (SC)

*Response:* This rulemaking does not seek to change any meaning derived from the original statutory language of the Indiana Environmental Policy Act, nor is it intended to expand the requirements for implementing agencies beyond those originally intended by statute. This rulemaking is intended to specifically address the statutory charge to the environmental boards to define "major state action significantly affecting the quality of the human environment." It is beyond the scope of this rulemaking to attempt to define and clarify legislative intent.

*Comment:* The language used at [326 IAC 16-2.1-4\(5\)](#) also is taken from [IC 13-12-4-5](#) and is obscure in meaning. Subdivision (5) requires a description of "any irreversible and irretrievable commitments of resources that would be involved....", but it is not clear if this refers only to natural resources or to all kinds of resources. (SC)

*Response:* IDEM agrees that there exists some lack of clarity in the Environmental Policy Act statutes. However, the scope of this rulemaking is limited to the statutory charge within the Act to the environmental boards. It is up to each implementing agency to determine how the Act applies to it. It would seem reasonable that, without a limiting adjective, the term "resources" could be read to include all types of resources. However, it is not within the scope of this rulemaking to clarify legislative intent.

*Comment:* An additional subdivision should be added to [326 IAC 16-2.1-4](#) to read as follows:

"(6) Any opportunities that exist to mitigate or reduce potential environmental impacts with the preferred alternative."

Providing for evaluation of opportunities to mitigate potential environmental impacts is an important step that ought to be included in an environmental impact statement. Whatever the possible environmental impacts, there are generally adjustments that can be made to projects to reduce the impacts, and the environmental impact statement is the right place to evaluate those and seek input from other agencies and the public on ways to do so. (IKE)

*Response:* The five factors listed in the definition are found at [IC 13-12-4-5\(C\)](#), which describes what is required in an environmental impact statement. While this rulemaking was not intended to impose additional requirements beyond those required by statute, it may be appropriate to include information on discussing opportunities to mitigate environmental impacts in the guidance which will be developed to aid implementing agencies when they are conducting an environmental assessment or developing an environmental impact statement.

*Comment:* The word "impairment" should be added at [326 IAC 16-2.1-8\(4\)\(C\)](#) so that the clause reads as follows:

(C) The degree to which the action may cause loss, impairment, or destruction of significant:  
(SC, IKE)

*Response:* IDEM agrees and has included the change in the draft rules.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On April 1, 2009, the Air Pollution Control Board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 16](#). Comments were made by the following party:

Janet McCabe, Improving Kids' Environment (IKE)

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

*Comment:* The commenter supports the preliminary adoption of this rule. As a participant of the workgroup for this rulemaking the commenter is pleased that IDEM has taken the task of developing guidance to give to the other state agencies. One of the fundamental pillars of NEPA and of Indiana's environmental review statutes is the opportunity for the public to know what these projects are and to know what the potential environmental impacts are and have an opportunity to weight in on them. It is important for IDEM to consider the public comment process when developing the guidance. (IKE)

*Response:* The department appreciates the support.

**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:

<http://www.in.gov/idem/4108.htm>

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

Alison Surface  
IDEM Compliance and Technical Assistance Program - OPPTA  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1307  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

[326 IAC 16-1-1](#); [326 IAC 16-1-2](#); [326 IAC 16-1-3](#); [326 IAC 16-1-4](#); [326 IAC 16-1-5](#); [326 IAC 16-2](#); [326 IAC 16-2.1](#)

SECTION 1. [326 IAC 16-1-2](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 16-1-2](#) Purpose**

**Authority:** [IC 13-12-4-5](#); [IC 13-14-8](#)

**Affected:** [IC 13-12-4](#)

Sec. 2. The purpose of this rule (~~[326 IAC 16-1](#)~~) **article** is to:

(1) designate which actions:

(A) are within the scope of ~~[IC 13-1-10-3](#)~~; [IC 13-12-4](#); and in particular which actions

(B) constitute a major state action significantly affecting the quality of the human environment; and to

(2) provide an environmental assessment form to a process that state agencies may use to determine if a specific action is a major state action significantly affecting the quality of the human environment; and

(3) assist state agencies in that determination, carrying out their responsibilities under [IC 13-12-4](#).

*(Air Pollution Control Board; [326 IAC 16-1-2](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2567; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; readopted filed Nov 21, 2008, 2:40 p.m.: [20081210-IR-326080768BFA](#))*

SECTION 2. [326 IAC 16-1-3](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 16-1-3](#) Applicability; exemptions; other requirements not superseded**

**Authority:** [IC 13-12-4-5](#); [IC 13-14-8](#)

**Affected:** [IC 13-12-4-8](#)

Sec. 3. (a) This rule (~~[326 IAC 16-1](#)~~) **article** applies to all state agencies.

(b) Each agency of the This article does not supersede or set aside any other:

(1) assessment;

(2) review; or

(3) determination;

~~required by federal or state shall comply with this law, rule, ([326 IAC 16-1](#)) unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. or regulation.~~

~~(c) [IC 13-1-10-7](#) provides that the "(P)olicies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of state agencies." Accordingly, each agency shall interpret the provisions of [IC 13-1-10-7](#) and this rule ([326 IAC 16-1](#)) as a supplement to its existing authority and as a mandate to view traditional policies in the light of the chapter's ([IC 13-1-10](#)) environmental objectives.~~

~~(d) (c) Actions covered include, but are not limited to, **the following:**~~

- ~~(1) Agency legislative proposals.~~
- ~~(2) New and continuing projects and program activities directly undertaken by the agency or supported in whole or in part through state contracts, grants, subsidies, loans or other forms of funding assistance.~~
- ~~(3) The making, modification, or establishment of rules.~~

~~(e) (d) Actions exempted **are as follows:**~~

- ~~(1) Administrative procurements, (~~e.g.~~, **for example**, general supplies.~~
- ~~(2) Contracts for consulting services.~~
- ~~(3) Personnel actions.~~
- ~~(4) Repair or maintenance of existing structures or facilities involving no expansion.~~
- ~~(5) Basic data collection, research and experimental management, and resource evaluation activities **which that** do not result in a significant disturbance to the environment.~~

~~(f) (e) Categorical exemptions **include the following:**~~

~~(1) Minor actions **including the following:**~~

~~(A) Each agency may submit to the department of environmental management for approval **develop** a list of those actions **which that** it considers to be minor in nature and, therefore, categorically exempted.~~

~~(B) Each agency shall provide the following:~~

~~(i) **Opportunity for IDEM and the governor to comment on the list developed under clause (A).**~~

~~(ii) **Notice to the public of the minor actions list developed under clause (A).**~~

~~Only those actions on the lists **developed under clause (A)** shall be so exempted.~~

~~(2) Emergency actions **including** those actions necessitated by a sudden, unexpected occurrence **which that** demands immediate action to mitigate loss or damage to:~~

- ~~(A) life;~~
- ~~(B) health;~~
- ~~(C) property; or~~
- ~~(D) essential public services;~~

~~shall be exempted.~~

~~(3) **Remediation actions or projects conducted in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300, as amended.**~~

~~(g) (f) Statutory exemptions **include the following:**~~

~~(1) The issuance of a license or permit by any agency of the state, as exempted by [IC 13-1-10-6](#). [IC 13-12-4-8](#).~~

~~(2) [IC 13-1-10-8](#) provides "(A)ny state agency that is required by the National Environmental Policy Act (P.L. 91-190) to file a federal **An action for which an** environmental impact statement shall not be required to file a statement with the state government **or finding of no significant impact was prepared pursuant to the National Environmental Policy Act of 1969**, as provided under sections 3 and 4 ([IC 13-1-10-3](#) and [IC 13-1-10-4](#)) of this chapter, **amended, 42 U.S.C. 4321 et seq. (NEPA)**, unless the action contemplated requires state legislation or state appropriations.~~

*(Air Pollution Control Board; [326 IAC 16-1-3](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2567; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; readopted filed Nov 21, 2008, 2:40 p.m.: [20081210-IR-326080768BFA](#))*

SECTION 3. [326 IAC 16-1-4](#) IS AMENDED TO READ AS FOLLOWS:

### [326 IAC 16-1-4](#) General considerations for preparing environmental assessment forms

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-12-4](#)

Sec. 4. It is not within the scope of this rule (~~326 IAC 16-1~~) to identify before the fact which (a) **In accordance with [IC 13-12-4-5](#), each state agency must determine whether an action it is considering constitutes a major state agency action significantly affecting the quality of the human environment. The specific determination must be developed for each agency action by preparation of **Such an action requires the completion of an environmental impact statement. The definitions from this rule and the preparation of an environmental assessment as set forth in [326 IAC 16-1-5](#). will aid state agencies in making a determination of the necessity for an environmental impact statement. The department shall develop guidance to further aid state agencies in this assessment, including the following:****

- (1) A state form for an environmental assessment.
- (2) Guidance on completion of an environmental impact statement.

(b) **Before developing an environmental impact statement, each responsible official, in preparing the assessment both primary accordance with [IC 13-12-4-5](#), shall consult with and secondary consequences of short term and long term duration should be considered by the obtain comments of each state agency since many State actions stimulate that has jurisdiction by law or induce secondary effects in the form of associated investments special expertise with respect to any environmental impact involved. Copies of the statement and changed patterns of social the comments of the appropriate federal, state, and economic activities. local agencies that are authorized to develop and enforce environmental standards:**

- (1) shall be made available to the governor and the public; and
- (2) must accompany the proposal through the agency review processes.

(c) ~~The effect of many state decisions about a project or complex of projects may be individually limited but can be cumulatively considerable in affecting the environment.~~

(d) ~~A proposed action which is likely to be highly controversial from an environmental standpoint should be considered significant justification for preparation of an environmental impact statement.~~

*(Air Pollution Control Board; [326 IAC 16-1-4](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2568; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; readopted filed Nov 21, 2008, 2:40 p.m.: [20081210-IR-326080768BFA](#))*

SECTION 4. [326 IAC 16-2.1](#) IS ADDED TO READ AS FOLLOWS:

## Rule 2.1. Definitions

### [326 IAC 16-2.1-1](#) Definitions

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-11-2](#); [IC 13-12-4](#)

Sec. 1. The definitions in [IC 13-11-2](#) and this rule apply throughout this article.

*(Air Pollution Control Board; [326 IAC 16-2.1-1](#))*

### [326 IAC 16-2.1-2](#) "Department" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-11-2-51](#); [IC 13-12-4](#)

Sec. 2. "Department" has the meaning set forth in [IC 13-11-2-51](#).

*(Air Pollution Control Board; [326 IAC 16-2.1-2](#))*

### [326 IAC 16-2.1-3](#) "Environmental assessment" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Sec. 3. (a) "Environmental assessment" means a concise public document for which a state agency is responsible that does the following:

- (1) Briefly provides sufficient evidence and analysis for determining whether to prepare:
  - (A) an environmental impact statement; or
  - (B) a finding of no significant impact.
- (2) Aids an agency's compliance with the Environmental Policy Act when no environmental impact statement is necessary.
- (3) Helps the agency to prepare an environmental impact statement when one is necessary.

(b) An environmental assessment includes the following:

- (1) Brief discussions of:
  - (A) the need for the proposed action;
  - (B) alternatives to the proposed action; and
  - (C) environmental impacts of the proposed action and the alternatives.
- (2) A listing of agencies and persons consulted in performing the assessment.

(Air Pollution Control Board; [326 IAC 16-2.1-3](#))

#### [326 IAC 16-2.1-4](#) "Environmental impact statement" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-12-4](#)

Sec. 4. "Environmental impact statement" means the detailed written statement made by the responsible official of a state agency that plans or undertakes a major state action significantly affecting the quality of the human environment that is required by [IC 13-12-4-5](#). The environmental impact statement describes the following:

- (1) The potential environmental impact of the proposed action.
- (2) Any adverse environmental impact that cannot be avoided should the proposal be implemented.
- (3) Alternatives to the proposed action.
- (4) The relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity.
- (5) Any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented.

The environmental impact statement is prepared after consulting with, and obtaining the comment of, each state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved.

(Air Pollution Control Board; [326 IAC 16-2.1-4](#))

#### [326 IAC 16-2.1-5](#) "Major state action" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 2-2.1-1](#); [IC 4-22-2](#); [IC 13-12-4](#); [IC 13-14-9](#)

Sec. 5. "Major state action" means any of the following that are planned or undertaken by a state agency:

- (1) Actions, including new and continuing activities, including projects and programs entirely or partly:
  - (A) financed;
  - (B) assisted;
  - (C) implemented;
  - (D) conducted;
  - (E) regulated; or
  - (F) approved;

by state agencies.

(2) Adoption of administrative rules.

(3) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include one (1) or more of the following:

(A) Actions approved by permit or other regulatory decision.

(B) State and state assisted activities.

(4) Proposals for legislation under [IC 2-2.1-1](#).

(Air Pollution Control Board; [326 IAC 16-2.1-5](#))

### [326 IAC 16-2.1-6](#) "Person" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-11-2-158](#); [IC 13-12-4](#)

Sec. 6. "Person" has the meaning set forth in [IC 13-11-2-158\(a\)](#).

(Air Pollution Control Board; [326 IAC 16-2.1-6](#))

### [326 IAC 16-2.1-7](#) "Responsible official" or "responsible state official" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-12-4](#)

Sec. 7. "Responsible official" or "responsible state official" means the person established by law as the head of the state agency that plans or undertakes a major state action significantly affecting the quality of the human environment:

(1) who is required to make the environmental impact statement required by [IC 13-12-4](#); or

(2) to whom that responsibility is delegated in writing.

(Air Pollution Control Board; [326 IAC 16-2.1-7](#))

### [326 IAC 16-2.1-8](#) "Significantly affecting the quality of the human environment" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-12-4](#)

Sec. 8. "Significantly affecting the quality of the human environment" means the following:

(1) In relation to a major state action, an action that, when analyzed according to the context and intensity of the action, has an adverse, rather than beneficial, impact on the natural and physical environment and the relationship of people with that environment.

(2) Impacts may be direct, meaning they occur at the same time and place, or indirect, meaning the impacts caused by the action occur later in time or farther removed in distance, but are still reasonably foreseeable.

(3) The significance of an action may vary with the setting of the proposed action. Both short-term and long-term effects are relevant.

(4) The intensity of an action means the severity of the impact on the environment. Considerations include the following:

(A) The degree to which the proposed action affects human health or safety.

(B) Unique characteristics of the geographic area such as proximity to one (1) or more of the following:

(i) Historic or cultural resources.

(ii) Park lands.

(iii) Prime farm lands.

(iv) Wetlands.

(v) Karst areas.

(vi) Other ecologically critical areas, including the habitat of endangered or threatened species.

(C) The degree to which the action may cause loss, impairment, or destruction of significant:



- (i) scientific;
  - (ii) cultural; or
  - (iii) historical;
- resources.

(5) Significance cannot be avoided by terming an action temporary or breaking it down into several smaller component actions. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.

(Air Pollution Control Board; [326 IAC 16-2.1-8](#))

#### [326 IAC 16-2.1-9](#) "State agency" defined

Authority: [IC 13-12-4-5](#); [IC 13-14-8](#)

Affected: [IC 13-12-4](#)

Sec. 9. "State agency", as used in this article, means any:

- (1) department;
- (2) board;
- (3) commission;
- (4) bureau; or
- (5) council;

created by the legislature having statewide jurisdiction, the operation of which is financed from appropriations of the general assembly. Local government units at the town, city, township, or county level are not included.

(Air Pollution Control Board; [326 IAC 16-2.1-9](#))

SECTION 5. THE FOLLOWING ARE REPEALED: [326 IAC 16-1-1](#); [326 IAC 16-1-5](#); [326 IAC 16-2.](#)

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

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