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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #09-362

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING OPEN BURNING****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 4-1](#) concerning open burning. 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 4-1](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

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

Open burning is the burning of any materials wherein contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber. Open burning activities may contribute to the formation of ground level ozone, which is a harmful pollutant that damages human health, vegetation, and buildings. Open burning activities produce smoke, which contributes to regional haze, visibility impairment, and fine particulates, which may reach levels causing health problems including eye, nose, and throat irritation; lung irritation and congestion; and shortness of breath and coughing.

Open burning is generally prohibited in Indiana; however, state law exempts certain open burning activities under conditions that minimize impact on air quality and public health. Open burning activities that are allowed include maintenance burning, recreational or ceremonial fires, and the burning of clean petroleum products for fire extinguisher training. Emergency burning is allowed in specified situations with oral approval from IDEM. In addition to the specific limited instances when open burning is allowed, a person may submit an application to IDEM for an approval to engage in open burning. The types of open burning that may be considered by IDEM for an approval include burning for purposes of fire training and burning of natural growth derived from a clearing operation.

IDEM has determined that five additional categories of open burning may be suitable for exemption from the current IDEM approval process. These new exemptions will relieve IDEM and the regulated community of unnecessary paperwork while continuing to protect Hoosiers and our environment.

First, IDEM is proposing to amend [326 IAC 4-1-3\(c\)](#) by adding criteria that would allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training.

Second, IDEM is proposing to amend [326 IAC 4-1-3\(c\)\(8\)](#) to allow the burning of clean petroleum products, natural gas, methane, or propane for fire training when the fire training is conducted by the Indiana Department of Homeland Security using its mobile training unit.

Third, IDEM is proposing to amend [326 IAC 4-1-3\(a\)\(1\)\(B\)\(i\)](#) to allow the burning of wood products derived from the pruning or clearing of a roadside by a city or town highway department. The current rule applies to county highway departments.

Fourth, IDEM is proposing to amend [326 IAC 4-1-3\(c\)\(4\)](#) to allow prescribed burning by local jurisdictions for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention. The current rule applies to prescribed burns performed by the Department of Natural Resources (DNR), United States Department of the Interior, and United States Department of Agriculture Forest Service.

Fifth, IDEM is proposing to clarify [326 IAC 4-1-4\(2\)](#) so that emergency burning with prior oral approval when there is an imminent hazard to health, safety, or the environment is allowed. The current rule allows emergency burning with prior oral approval when there is an imminent health or safety hazard following a natural disaster, such as a tornado, high winds, hail storm, earthquake, fires, flood, ice storm, or explosion. Ensuring that this rule covers imminent environmental hazards would allow for timely burning of insect-infested trees such as those infested with the emerald ash borer.

Upon completion of the rulemaking, this rule will be submitted to the U.S. EPA for approval as a revision to the state implementation plan.

**Alternatives To Be Considered Within the Rulemaking**

Alternative 1. Amend [326 IAC 4-1-3\(c\)](#) to establish criteria for an exemption to allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- 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. Amend [326 IAC 4-1-3\(c\)\(8\)](#) to include an exemption to allow the burning of clean petroleum products, natural gas, methane, or propane for fire training conducted by the Indiana Department of Homeland Security using its mobile training unit.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- 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. Amend [326 IAC 4-1-3\(a\)\(1\)\(B\)\(i\)](#) to include an exemption for the burning of wood products derived from the pruning or clearing of a roadside by a city or town highway department.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 4. Amend [326 IAC 4-1-3\(c\)\(4\)](#) to include an exemption for prescribed burning by local jurisdictions for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 5. Amend [326 IAC 4-1-4\(2\)](#) to clarify that environmental hazards are included which will allow for the emergency burning of insect-infested trees such as those infested with the emerald ash borer.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 6. Do not amend the rule.

- 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 alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- 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**

There is no applicable federal law.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. IDEM's Office of Air Quality processes approximately 130 approvals per year for fire departments to conduct live fire training using single family dwellings. By establishing criteria for an exemption to allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training, IDEM will save time and money that normally would have been spent in this approval process. The fire departments would also save time and money that would normally have been spent applying and waiting for IDEM's approval to conduct this valuable training. This alternative will still maintain the same criteria and conditions currently contained in open burning approvals. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval.

Potential Fiscal Impact of Alternative 2. This alternative would extend the current exemption for the burning of clean petroleum products, natural gas, methane, or propane to include fire training conducted by the Indiana Department of Homeland Security using its mobile training unit. This amendment will reduce the time and money spent by IDEM staff to process approvals by reducing the overall number of open burning approval applications received by IDEM. The amendment will also reduce paperwork and time required by the Indiana Department of Homeland Security to apply for an open burning approval in order to use its mobile training unit. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval.

Potential Fiscal Impact of Alternative 3. This alternative would extend the current exemption for the burning of wood products derived from the pruning or clearing of a roadside by a county highway department to also include a city or town highway department. This will reduce the amount of time that IDEM staff presently allocates to investigating and issuing approvals. The amendments will also reduce paperwork and time allocation

requirements of city and town governmental units that routinely apply for open burning approvals. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval.

Potential Fiscal Impact of Alternative 4. This alternative would extend the current exemption for prescribed burning by the Department of Natural Resources, United States Department of the Interior, and United States Department of Agriculture Forest Service to also include prescribed burning by local jurisdictions. This will reduce the amount of time that IDEM staff presently allocates to investigating and issuing approvals. The amendments will also reduce paperwork and time allocation requirements of local jurisdictions that routinely apply for open burning approvals. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval.

Potential Fiscal Impact of Alternative 5. The emergency burning rule has already been interpreted by IDEM to include the burning of insect-infested trees such as those infested with the emerald ash borer. This amendment is for clarification purposes only; therefore, it is expected to have no fiscal impact.

Potential Fiscal Impact of Alternative 6. This alternative will have no fiscal impact.

#### **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, Senior Environmental Manager

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)

#### **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 Manda Clevenger, Rules Development Branch, Office of Legal Counsel 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.
- (3) The submission of information on the fiscal impact of any of the alternatives.

Mailed comments should be addressed to:

#09-362 (APCB) Open Burning Regulations

Manda Clevenger Mail Code 61-49  
c/o Administrative Assistant  
Rules Development Branch  
Office of Legal Counsel  
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 thirteenth floor east reception desk, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, 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 Branch at (317) 233-8903.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 6, 2009.

Additional information regarding this action may be obtained from Manda Clevenger, Rules Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch  
Office of Legal Counsel

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