
TITLE 326 AIR POLLUTION CONTROL BOARD**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #09-363

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ASBESTOS MANAGEMENT**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 14-10](#) and [326 IAC 18](#) concerning asbestos management. 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 14-10](#); [326 IAC 18](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

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

The U.S. EPA identified asbestos as a hazardous air pollutant and promulgated the Asbestos National Emission Standards for Hazardous Air Pollution (NESHAP) in 40 CFR 61, Subpart M, on April 6, 1973. On March 6, 1974, Indiana submitted a request to the U.S. EPA for delegation of authority to implement and enforce the NESHAP. Subsequently, the U.S. EPA granted delegation of authority to Indiana, the notice of which was published in the Federal Register on September 30, 1976 (41 FR 43237).

In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) that mandated a regulatory program to address asbestos hazards in schools. AHERA required local education agencies to inspect their schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards. AHERA also required the U.S. EPA to develop an asbestos plan that provided for the training of persons performing asbestos-related work in schools and to obtain accreditation to demonstrate proficiency as a prerequisite for performing this work. Under AHERA, states are required to adopt a state accreditation program that is no less stringent than that described in the federal plan. In 1988, the Indiana Air Pollution Control Board (APCB) adopted [326 IAC 18](#), which incorporated the requirements of the federal plan by establishing training requirements and initiating a licensing program for those persons working in Indiana.

On November 28, 1990, Congress enacted the Asbestos School Hazard Abatement Reauthorization Act (ASHARA) and expanded the accreditation procedures required for persons who work with asbestos-containing material in public and commercial buildings as well as schools. In turn, the APCB adopted standards for asbestos applicable to demolition and renovation operations at [326 IAC 14-10](#) and has amended these rules over time to update and clarify the existing requirements. In addition, the rules at [326 IAC 18](#) have been updated by the APCB to remain consistent with the underlying federal regulations.

In this rulemaking, IDEM is proposing amendments to clarify and update Indiana's existing asbestos management program rules and to ensure consistency in the program. The proposed amendments are as follows:

First, IDEM is proposing to provide clarification to the application, notification, and licensing procedures for the asbestos program in [326 IAC 14-10](#) and [326 IAC 18](#).

Second, IDEM is proposing to change references from "accreditation" to "license" and "notification" to "notice" in [326 IAC 14-10](#) and [326 IAC 18](#).

Third, IDEM is proposing to correct references in [326 IAC 14-10](#) and [326 IAC 18](#) to the Solid Waste Management Board rules found in 329 IAC that have since been repealed.

Fourth, IDEM is proposing to amend and add definitions in [326 IAC 14-10](#) and [326 IAC 18](#).

Fifth, IDEM is proposing to amend [326 IAC 18-1-10](#), which contains the requirements for obtaining a duplicate asbestos license.

Sixth, IDEM is proposing to amend the requirements for the issuance of an asbestos license in [326 IAC 18](#).

IDEM seeks comments on this proposed rulemaking.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Amend the asbestos NESHAP and asbestos management rules to clarify and update the rules.

- 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. The asbestos program is federally authorized, but these amendments apply to the state only program.
- 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. Do not amend the rules.

- 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

This rulemaking is affected by the following federal laws: 40 CFR 61, National Emission Standards for Hazardous Air Pollutants, Subpart A (General Provisions) and Subpart M (National Emission Standard for Asbestos); 40 CFR 763, Toxic Substances Control Act, Subpart E (Asbestos-Containing Materials in Schools) and Subpart G (Asbestos Worker Protection); 29 CFR 1910.1001, Occupational Safety and Health Standards (Asbestos); 29 CFR 1910.134, Occupational Safety and Health Standards (Respiratory Protection); 29 CFR 1910.1200, Occupational Safety and Health Standards (Hazard Communication); and 29 CFR 1926.1101, Occupational Safety and Health Administration Safety and Health Regulations for Construction (Asbestos).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative will clarify and update Indiana's existing asbestos management program policies and ensure consistency in the program. Therefore, IDEM anticipates minimal fiscal impact to result from implementation of the rule amendments.

Potential Fiscal Impact of Alternative 2. 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

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

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

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.

Mailed comments should be addressed to:
#09-363 (APCB) Asbestos Management
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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