
TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #09-477**

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING INCORPORATION BY REFERENCE OF
COMPOUNDS EXCLUDED AS VOLATILE ORGANIC COMPOUNDS**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-2-48](#) for the purpose of revising the definition of volatile organic compounds (VOCs) to include exclusions for dimethyl carbonate and propylene carbonate. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Air Pollution Control Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-2-48](#).

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

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods and public hearings routinely provided. In cases where the commissioner determines that there is no anticipated benefit from a second public comment period and first public hearing, IDEM may forgo these opportunities for public comment and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_x) react in the atmosphere. Because of the harmful health effects of ozone, U.S. EPA and Indiana limit the amount of VOCs and NO_x that can be released into the atmosphere. VOCs are those organic compounds of carbon that form ozone through atmospheric photochemical reactions with the exemption of compounds that have negligible reactivity for the formation of ozone. Negligibly reactive compounds are those compounds that, based on scientific studies, are found not to contribute appreciably to ozone formation.

It has been U.S. EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOCs to focus VOC control efforts on compounds that do significantly increase ozone concentrations and as an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs.

The U.S. EPA lists the negligibly reactive compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOCs. On January 21, 2009, U.S. EPA determined that dimethyl carbonate and

propylene carbonate should be added to the list of compounds that are excluded from the definition of VOCs on the basis that these compounds make a negligible contribution to tropospheric ozone formation and will not result in adverse human health or environmental effects under reasonable conditions. That Federal Register notice can be found at 74 FR 3437.

Dimethyl carbonate has been used as a solvent in paints and coatings, as a methylation and carbonylation agent in organic synthesis, and as a fuel additive. Dimethyl carbonate is less photochemically reactive than ethane; therefore, the U.S. EPA found that it was negligibly reactive and exempt from the regulatory definition of VOCs at 40 CFR 51.100(s).

Propylene carbonate is an odorless nonviscous clear liquid with a low vapor pressure (0.023 mm Hg at 20°C) and low evaporation rate compared to many other commonly used organic solvents. It has been used in cosmetics, as an adhesive component in food packaging, as a solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application. Propylene carbonate has a low reactivity relative to ethane based on the mass maximum incremental reactivities (MIR) expressed on a reactivity per gram basis; therefore, U.S. EPA found that propylene carbonate was negligibly reactive and exempt for the regulatory definition of VOCs at 40 CFR 51.100(s).

In this rulemaking, IDEM is proposing to amend [326 IAC 1-2-48](#) to incorporate by reference the January 21, 2009, Federal Register, 74 FR 3437, that adds the compounds dimethyl carbonate and propylene carbonate to the list of compounds that are excluded from the definition of VOCs on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

By incorporating this federal regulation to exclude dimethyl carbonate and propylene carbonate, this rulemaking helps to ensure that state rules are consistent with federal regulations.

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

No 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. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

This rulemaking has no substantial direct effects on industry because it does not impose any new mandates on these entities, but, on the contrary, removes two chemical compounds from the regulatory definition of VOCs and from regulation for federal purposes that may provide lower cost alternatives to compounds currently in use. Additionally, because this is an incorporation of existing federal law, no impact beyond that already imposed by the federal law is imposed by this rulemaking. Therefore, there will be no fiscal impact from the implementation of this rulemaking.

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).

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

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking on the incorporation of federal regulations that excludes dimethyl carbonate and propylene carbonate from current state definitions as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) The public will benefit from prompt adoption of this rule because companies are interested in using the excluded chemicals to substitute for chemicals more hazardous to the environment as soon as possible.
- (3) I have determined that under the specific circumstances pertaining to this rule there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first public comment period and first public hearing.
- (4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

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 rule. Mailed comments should be addressed to:

#09-477(APCB) VOC Definition Exclusions
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 receptionist on duty at the thirteenth floor east reception desk, Office of Legal Counsel, 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 31, 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).

DRAFT RULE

SECTION 1. [326 IAC 1-2-48](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-2-48](#) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-3-14](#)

Sec. 48. (a) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) as follows:

- (1) 40 CFR 51.100(s)(1)*, **as amended at 74 FR 3437, January 21, 2009***.
- (2) 40 CFR 51.100(s)(5)*.
- (3) 40 CFR 51.100(s)(2)*, as measured by [326 IAC 8-1-4](#) and approved by the commissioner, subject to conditions under 40 CFR 51.100(s)(3) through 40 CFR 51.100(s)(4)*.

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

*These documents are incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, **Legal Counsel**, Indiana Government Center North, ~~Tenth~~ **Thirteenth** Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 1-2-48](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055; filed Oct 20, 2005, 1:30 p.m.: 29 IR 796; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR-326060412FRA](#))

[Notice of Public Hearing](#)

Posted: 07/01/2009 by Legislative Services Agency
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