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

LSA Document #09-498

**DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING BEST AVAILABLE RETROFIT TECHNOLOGY EMISSION LIMITATIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules establishing best available retrofit technology (BART) emission limitations in order to comply with the federal regional haze rule. 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 26](#).**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**

This rulemaking is the proposed second rule of a two-part process to establish state rules to comply with the federal regional haze rule. The first rulemaking (DIN: [20080220-IR-326060208FRA](#) or [326 IAC 26-1](#)) incorporated into state rule the federal BART guidelines and established requirements for BART eligible sources. This rulemaking will establish BART emission limitations for certain sources determined to be subject to BART.

In accordance with Sections 169A and 169B of the Clean Air Act (CAA), the regional haze rule (64 FR 35714, July 1, 1999) requires states to submit a state implementation plan (SIP) to address visibility impairment in federally protected parks and wilderness areas (Class I areas). To meet this requirement, IDEM must evaluate whether certain emission units within affected industries adversely impact visibility in Class I areas. Though there are no Class I areas in Indiana, there are several in nearby states that may be affected by emissions from Indiana sources. On July 6, 2005, U.S. EPA published the BART guidelines in the Federal Register (70 FR 39104). These guidelines are a component of the regional haze rule that are intended to protect and improve visibility in national parks and wilderness areas. The BART guidelines provide the mechanism for complying with the requirement to address visibility impairment in Class I areas.

To meet the BART component of the federal regional haze rule, Indiana's BART rulemakings were planned in two phases. The first rule, which became effective on February 22, 2008, incorporates by reference the federal rule and guidelines and goes further to provide specific milestones to assist sources and IDEM in meeting the requirements ([326 IAC 26-1](#)). That rule established the process for sources that are subject to BART to provide to IDEM the BART analysis necessary to determine the proper level of control for each emissions unit and pollutant subject to BART. This second rulemaking will incorporate all necessary BART emission limits for certain sources subject to BART into [326 IAC 26](#) and will amend any other existing rules in Title 326 necessary for consistency.

In conjunction with sources affected by the federal BART requirements, IDEM has identified the BART eligible units and, through dispersion modeling, has determined which of these sources are subject to the BART requirements. BART applies to emissions of sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and direct particulate matter (PM), including PM<sub>2.5</sub> and PM<sub>10</sub>, that contribute to visibility impacts.

IDEM is currently completing work with the BART eligible sources to verify that the sources must comply with the BART requirements. If required, emission limits for these sources will be established and included in this rulemaking. In accordance with Section 169A(g)(2) of the Clean Air Act and 40 CFR 51.308(e)(1)(ii), the emission limits will be based on the following factors: (1) the technology available; (2) the costs of compliance; (3) the energy and non-air quality environmental impacts of compliance; (4) any existing pollution control technology in use at the source; (5) the remaining useful life of the source; and (6) the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

On May 12, 2005, U.S. EPA published the Clean Air Interstate Rule (CAIR), requiring reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units (EGUs) in 28 eastern States and the District of Columbia (70 FR 25162). Though vacated on July 11, 2008, CAIR has since been reinstated and remanded to U.S. EPA for reconsideration. In states affected by CAIR, U.S. EPA determined that CAIR improves visibility more than implementing BART for EGUs, except for EGUs over 750 megawatts that must follow the BART guidelines in accordance with 40 CFR 51.308(e)(1)(ii)(B). Because CAIR is expected to result in significant reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions, Indiana chose to use CAIR as a substitute for BART ([326 IAC 26-1-5](#)) rather than require BART eligible EGUs to install, operate, and maintain BART in accordance with the BART guidelines. U.S. EPA has yet to decide if the CAIR replacement rule will satisfy BART requirements for EGUs. IDEM will reassess the need to proceed with a BART rule for EGUs upon EPA's issuance of the CAIR replacement rule.

On October 13, 2006, U.S. EPA published a final rule on alternatives to source-specific BART (71 FR 60612) that allows sources subject to BART to propose an alternative to BART controls. Sources that propose an alternative to BART are required to demonstrate that the proposed alternative is better than BART and would still have to conduct the analysis to establish what the BART control level should be for the sources subject to BART. The analysis would need to show greater reasonable progress toward improved visibility. The alternative could affect BART and non-BART units. Any alternative must be for the same pollutant and must be demonstrated to attain a greater improvement in visibility than BART.

In the first BART rulemaking, DIN: [20080220-IR-326060208FRA](#), IDEM established a compliance date of not more than five years from the effective date of the state rule ([326 IAC 26-1-8](#)). Therefore, BART requirements established in this second rulemaking will be effective not later than February 22, 2013. In addition, because the BART requirements themselves are "applicable requirements" of the CAA, they must be included as Title V permit conditions according to the procedures established in 40 CFR Part 70. Section 302(k) of the CAA requires emissions limits such as BART to be met on a continuous basis. Although this provision does not necessarily require the use of continuous emissions monitoring (CEMs), it is important that sources employ techniques that ensure compliance on a continuous basis. Monitoring requirements generally applicable to sources, including those that are subject to BART, are governed by other regulations.

### Indiana BART Sources

Of the sources identified as BART eligible, modeling indicates that one non-EGU source, ALCOA, is subject to BART. IDEM has identified several EGUs that are subject to BART. However, as provided by the existing CAIR, IDEM assumes NO<sub>x</sub> and SO<sub>2</sub> BART requirements are met by the participation of these sources in the CAIR NO<sub>x</sub> and SO<sub>2</sub> trading program. Other non-EGU sources were also identified as being BART eligible, but they submitted analyses demonstrating that they are not subject to BART. These sources are: (1) SABIC Innovative Plastics, Mt. Vernon; (2) ArcelorMittal, Burns Harbor, LLC; and (3) ESSROC Cement Corp., Speed. IDEM findings regarding these listed non-EGU, BART eligible sources are subject to approval by U.S. EPA.

IDEM will review the analyses for completeness and approvability in accordance with [326 IAC 26-1](#), the BART guidelines, and 40 CFR 51.308(e) and 40 CFR 51.308(i). The emission limits representing BART or an alternative to BART will be included in this rulemaking and the BART eligible sources' Part 70 permits. This completed BART rulemaking will be submitted to U.S. EPA for approval into the state implementation plan.

IDEM is seeking comments on this new rulemaking to incorporate emission limits or other appropriate controls to meet the requirements of BART and the regional haze rule. If there are any changes at the federal level during this rulemaking that impact the BART requirements or any sources subject to BART, IDEM will consider those changes and incorporate appropriate revisions, as needed.

### Alternatives to Be Considered Within the Rulemaking

Alternative 1. Establish BART requirements for all sources subject to BART as determined by the federal BART guidelines (40 CFR 51, Appendix Y).

- 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 an option provided by federal guidelines and is at the discretion of the state.
- 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. Establish BART requirements for only those sources subject to BART that have been determined to have a significant impact on a Class I area.

- 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 an option provided by federal guidelines and is at the discretion of the state.
- 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. Do not initiate rulemaking to address BART requirements.

- 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 an option provided by federal guidelines; however, though IDEM is not required to address BART requirements through rulemaking, the requirements still apply and must be addressed in some manner or U.S. EPA will establish a federal implementation plan (FIP) for Indiana.
- 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

Section 169A and 169B of the CAA contain authority and requirements to regulate pollutants that contribute to visibility impairment in mandatory Class I federal areas. The regional haze rule under 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) is the federal regulation addressing these visibility issues and contains the BART guidelines at 40 CFR 51, Appendix Y (Guidelines for BART Determinations Under the Regional Haze Rule). In addition, the CAIR provisions under 40 CFR 51 have

applicability for EGUs that could be BART eligible.

### **Potential Fiscal Impact**

A BART eligible source may incur costs in complying with the BART requirements of this rulemaking, but the requirements to be established in state rule are based in the federal regional haze rule so that the state rule would impose no requirement that is not imposed under federal law. If Indiana does not adopt this rule, the BART eligible sources would still be required to comply with the requirements as they exist in federal law. For this reason, this rulemaking will not impose a fiscal impact greater than \$500,000.

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

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  
100 North Senate Avenue  
W041  
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 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[bbraughn@idem.in.gov](mailto:bbraughn@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 please contact MaryAnn Stevens in the Office of Legal Counsel, Rules Development Branch at (317) 232-8635 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

### **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:

#09-498 (BART emission limits)  
MaryAnn Stevens  
Mail Code 61-49  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management

100 North Senate Avenue  
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Room N1301, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 233-5517. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with a copy of the letter submitted through the postal system.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by August 21, 2009.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch  
Office of Legal Counsel

*Posted: 07/22/2009 by Legislative Services Agency*  
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