TITLE 326 AIR POLLUTION CONTROL BOARD

Final Rule
LSA Document #08-208(F)

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 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

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Change in Notice of Second Hearing: September 30, 2009, Indiana Register (DIN: 20090930-IR-326080208CHA).
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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; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

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326 IAC 16-1-3 Applicability; exemptions; other requirements not superseded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~~ **statute,** 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 Indiana Department of Environmental Management (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.

~~(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; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

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 13-12-4-5

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 actions~~ **action** significantly ~~affect~~ **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; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

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; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-2 "Environmental assessment" defined

Authority: IC 13-12-4-5; IC 13-14-8
Affected: IC 13-12-4

Sec. 2. (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 IC 13-12-4 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 16-2.1-2; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-3 "Environmental impact statement" defined

Authority: IC 13-12-4-5; IC 13-14-8
Affected: IC 13-12-4-5

Sec. 3. "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 16-2.1-3; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-4 "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. 4. "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 16-2.1-4; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-5 "Responsible official" or "responsible state official" defined

Authority: IC 13-12-4-5; IC 13-14-8
Affected: IC 13-12-4

Sec. 5. "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 16-2.1-5; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-6 "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. 6. "Significantly affecting the quality of the human environment" means, in relation to a major state action, the following:
(1) 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 farmlands.
(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 16-2.1-6; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

326 IAC 16-2.1-7 "State agency" defined

Authority: IC 13-12-4-5; IC 13-14-8
Affected: IC 13-12-4

Sec. 7. "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 16-2.1-7; filed Feb 9, 2010, 9:26 a.m.: 20100310-IR-326080208FRA)

SECTION 5. THE FOLLOWING ARE REPEALED: 326 IAC 16-1-1; 326 IAC 16-1-5; 326 IAC 16-2.

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