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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE  
LSA Document #10-342****DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF LAKE AND PORTER COUNTIES AND LAWRENCEBURG TOWNSHIP, DEARBORN COUNTY FOR 8-HOUR OZONE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-4-16](#), [326 IAC 1-4-46](#), and [326 IAC 1-4-65](#) concerning the redesignation of Lake and Porter counties and Lawrenceburg Township, Dearborn County to attainment for 8-hour ozone. 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 1-4-16](#); [326 IAC 1-4-46](#); [326 IAC 1-4-65](#).

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

**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**

On April 30, 2004, the United States Environmental Protection Agency (U.S. EPA) designated Lake and Porter counties as a Subpart 2 Moderate nonattainment area and Lawrenceburg Township, Dearborn County as a Subpart 1 Basic nonattainment area for the 1997 8-hour ozone standard (69 FR 23900). The 1997 standard is set at 0.08 parts per million (ppm). This designation required Indiana to develop a plan to reduce volatile organic compound (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions in order to make a demonstration that the areas meet the 8-hour ozone standard.

Ozone monitoring data and photochemical modeling analyses now demonstrate that air quality has met the National Ambient Air Quality Standards (NAAQS) for ozone in Lake and Porter counties and Lawrenceburg Township, Dearborn County. As a result, IDEM requested redesignation of Lake and Porter counties to attainment of the 1997 8-hour ozone NAAQS based on quality-assured ozone data from the period of 2006 through 2008. This redesignation request was submitted on June 5, 2009, with supplemental information submitted on July 20, 2009. IDEM also requested redesignation of Lawrenceburg Township in Dearborn County to attainment of the

1997 8-hour ozone NAAQS based on quality-assured ozone data from the period of 2007 through 2009. This redesignation request was submitted on January 21, 2010. Included with these requests were summaries of relevant air quality data and a discussion of how the various criteria for redesignation have been met.

U.S. EPA published approval of Indiana's request to redesignate Lake and Porter counties to attainment for 8-hour ozone in the May 11, 2010, Federal Register at 75 FR 26113. U.S. EPA also published approval of Indiana's request to redesignate Lawrenceburg Township in Dearborn County to attainment for 8-hour ozone in the May 11, 2010, Federal Register at 75 FR 26118.

U.S. EPA's actions were based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act Section 107(d)(3)(E). U.S. EPA concluded that these criteria have been met with respect to the 8-hour ozone standard in Lake and Porter counties and Lawrenceburg Township, Dearborn County. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under Section 110(k) of the Clean Air Act.
3. U.S. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. U.S. EPA has determined that the maintenance plan for the area has met all of the requirements of Section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under Section 110 and Part D of the Clean Air Act.

With this notice, IDEM is proposing to make changes to [326 IAC 1-4-16](#), [326 IAC 1-4-46](#), and [326 IAC 1-4-65](#) to incorporate the final federal approval for redesignating Lake and Porter counties and Lawrenceburg Township, Dearborn County to attainment for the 8-hour ozone standard.

#### **[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**

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. However, there will be a potential cost savings to companies that will be able to be permitted under the prevention of significant deterioration (PSD) program ([326 IAC 2-2](#)) instead of the emission offset program ([326 IAC 2-3](#)).

#### **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, Rule and State Implementation Plan Development Section, Office of Air Quality 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](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)

**FINDINGS**

The Commissioner of IDEM has prepared findings regarding this rulemaking on the incorporation of federal regulations that amend [326 IAC 1-4-16](#), [326 IAC 1-4-46](#), and [326 IAC 1-4-65](#) concerning the redesignation of Lake and Porter counties and Lawrenceburg Township, Dearborn County to attainment for 8-hour ozone as required by federal law. 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) Indiana is required by the Clean Air Act to adopt these requirements as state rule.
- (3) The public will benefit from prompt adoption of this rule because it will ensure that state rules are consistent with federal regulations.
- (4) 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.
- (5) 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:

#10-342 (APCB) Lake and Porter Counties and Lawrenceburg Township, Dearborn County 8-Hour Ozone Redesignation  
Manda Clevenger Mail Code 61-50  
Rule and State Implementation Plan Development Section  
Office of Air Quality  
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 tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 2, 2010.

Additional information regarding this action may be obtained from Manda Clevenger, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

**DRAFT RULE**

SECTION 1. [326 IAC 1-4-16](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-4-16](#) Dearborn County**

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

**Affected:** [IC 13-15](#)

Sec. 16. The following attainment status designations are applicable to Dearborn County:

Pollutant	Designation
SO <sub>2</sub>	Cannot be classified.
CO	Unclassifiable or attainment effective November 15, 1990.
O <sub>3</sub>	<del>Nonattainment Subpart 1 effective June 15, 2004, for the 8-hour ozone standard for the Cincinnati-Hamilton OH-KY-IN area, including Lawrenceburg Township of Dearborn County. The remainder of Dearborn County is unclassifiable or Attainment effective June 15, 2004, May 11,</del>

	<b>2010</b> , for the 8-hour ozone standard. <sup>1</sup>
PM <sub>10</sub>	Unclassifiable effective November 15, 1990.
NO <sub>2</sub>	Cannot be classified or better than national standards.
Pb	Not designated.
<sup>1</sup> Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard which was revoked effective June 15, 2005.	

(Air Pollution Control Board; [326 IAC 1-4-16](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#))

SECTION 2. [326 IAC 1-4-46](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-4-46](#) Lake County**

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

**Affected:** [IC 13-15](#)

Sec. 46. The following attainment status designations are applicable to Lake County:

Pollutant	Designation
SO <sub>2</sub>	Better than national standards.
CO	Attainment effective February 18, 2000, for the part of the city of East Chicago bounded by Columbus Drive on the north; the Indiana Harbor Canal on the west; 148 <sup>th</sup> Street, if extended, on the south; and Euclid Avenue on the east. Unclassifiable or attainment effective November 15, 1990, for the remainder of East Chicago and Lake County.
O <sub>3</sub>	<del>Nonattainment Subpart 2-Moderate</del> <b>Attainment</b> effective June 15, 2004, <b>May 11, 2010</b> , for the 8-hour ozone standard. <sup>1</sup>
PM <sub>10</sub>	Attainment effective March 11, 2003, for the cities of East Chicago, Hammond, Whiting, and Gary. Unclassifiable effective November 15, 1990, for the remainder of Lake County.
NO <sub>2</sub>	Cannot be classified or better than national standards.
Pb	Not designated.
<sup>1</sup> Nonattainment Severe 17 effective November 15, 1990, for the Chicago-Gary-Lake County area for the 1-hour ozone standard which was revoked effective June 15, 2005.	

(Air Pollution Control Board; [326 IAC 1-4-46](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#))

SECTION 3. [326 IAC 1-4-65](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-4-65](#) Porter County**

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

**Affected:** [IC 13-15](#)

Sec. 65. The following attainment status designations are applicable to Porter County:

Pollutant	Designation
SO <sub>2</sub>	Cannot be classified for the area bounded on the north by Lake Michigan; on the west by the Lake County and Porter County line; on the south by I-80 and I-90; and on the east by the LaPorte County and Porter County line. The remainder of Porter County is better than national standards.

CO	Unclassifiable or attainment effective November 15, 1990.
O <sub>3</sub>	<del>Nonattainment Subpart 2 Moderate</del> <b>Attainment</b> effective June 15, 2004, <b>May 11, 2010</b> , for the 8-hour ozone standard. <sup>1</sup>
PM <sub>10</sub>	Unclassifiable effective November 15, 1990.
NO <sub>2</sub>	Cannot be classified or better than national standards.
Pb	Not designated.
<sup>1</sup> Nonattainment Severe 17 effective November 15, 1990, for the Chicago-Gary-Lake County area, including Porter County, for the 1-hour standard which was revoked effective June 15, 2005.	

(Air Pollution Control Board; [326 IAC 1-4-65](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#))

[Notice of Public Hearing](#)

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