
TITLE 326 AIR POLLUTION CONTROL BOARD

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #09-362

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING OPEN BURNING**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 1-2](#) and [326 IAC 4-1](#) concerning open burning. The First Notice of Comment Period, published on June 3, 2009 (DIN: [20090603-IR-326090362FNA](#)), requested comments on five categories of open burning that may be suitable for exemption from the current IDEM approval process. A Continuation of First Notice of Comment Period, published on June 30, 2010 (DIN: [20100630-IR-326090362FCA](#)), requested comments on one additional category of open burning that may be suitable for exemption from the current IDEM approval process. That comment period has ended. However, IDEM has identified additional areas of the open burning rules that need to be amended. This Continuation of First Notice of Comment Period provides information about amending the definition of "air curtain destructor" in [326 IAC 1-2-2.5](#) to include for the operation of an approved portable self-contained unit. It also includes information about the proposed amendment to the approval conditions of an air curtain destructor in [326 IAC 4-1](#) to allow for the operation of a portable self-contained unit. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 3, 2009, Indiana Register (DIN: [20090603-IR-326090362FNA](#)).

Continuation of First Notice of Comment Period: June 30, 2010, Indiana Register (DIN: [20100630-IR-326090362FCA](#)).

CITATIONS AFFECTED: [326 IAC 1-2](#); [326 IAC 4-1](#).

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**

Open burning is generally prohibited in Indiana. However, state law exempts certain open burning activities under conditions that minimize impact on air quality and public health. Open burning activities that are allowed include maintenance burning, recreational or ceremonial fires, and the burning of clean petroleum products for fire extinguisher training. Emergency burning is allowed in specified situations with oral approval from IDEM. In addition to the specific limited instances when open burning is allowed, a person may submit an application to IDEM for an approval to engage in open burning. One type of open burning that may be considered by IDEM for an approval is the operation of an air curtain destructor.

In the First Notice of Comment Period, IDEM proposed to add five additional categories of open burning that may be suitable for exemption from the current IDEM approval process to relieve IDEM and the regulated community of unnecessary paperwork while continuing to protect Hoosiers and the environment. In the first Continuation of First Notice of Comment Period, IDEM proposed to amend [326 IAC 4-1-3\(c\)](#) to allow for the respectful retirement of United States flags while minimizing emissions of pollutants during the burning process. With this Continuation of First Notice of Comment Period, IDEM has identified two additional alternatives for consideration in this rulemaking.

IDEM recently received an application for an approval of a portable self-contained air curtain destructor. These newer air curtain destructors allow the operator to maintain a more consistent temperature throughout the entire combustion chamber contributing to high combustion efficiency, little particulate waste, and a large reduction in particulate matter emissions. The units are self-contained and easily transportable. However, the current approval process for the operation of an air curtain destructor under [326 IAC 4-1](#) only allows for the burning of materials placed in an adjacent pit. It does not allow for the burning of materials placed in a portable self-contained unit.

In this rulemaking, IDEM is proposing to amend the definition of "air curtain destructor" in [326 IAC 1-2-2.5](#) to include for the operation of an approved portable self-contained unit. IDEM also proposes to amend the approval conditions of an air curtain destructor in [326 IAC 4-1](#) to allow for the operation of a portable self-contained unit. Upon completion of the rulemaking, this rule will be submitted to the U.S. Environmental Protection Agency for approval as a revision to the state implementation plan.

Alternatives to Be Considered Within the Rulemaking

The First Notice of Comment Period, published on June 3, 2009 (DIN: [20090603-IR-326090362FNA](#)),

included six alternatives for which comments were received. The first Continuation of First Notice of Comment Period, published on June 30, 2010 (DIN: [20100630-IR-326090362FCA](#)), included one additional alternative for which no comments were received. This Continuation of First Notice of Comment Period adds two additional alternatives to be considered.

Alternative 8. Amend the definition of an "air curtain destructor" at [326 IAC 1-2-2.5](#) to include an approved portable self-contained unit.

- 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.

Alternative 9. Amend [326 IAC 4-1](#) to include conditions for approval for the operation of an approved portable self-contained air curtain destructor.

- 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

There is no applicable federal law.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 8. This alternative would amend the definition of an "air curtain destructor" at [326 IAC 1-2-2.5](#) to include an approved portable self-contained unit. IDEM anticipates minimal fiscal impact to result from implementation of this rule amendment.

Potential Fiscal Impact of Alternative 9. This alternative will amend [326 IAC 4-1](#) to include conditions for approval for the operation of an approved portable self-contained air curtain destructor. This alternative will still maintain most of the same criteria and conditions currently contained in open burning approvals. Therefore, the fiscal impact is expected to be minimal.

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>

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer
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

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 232-8962
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

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, Rule and State Implementation Plan Development Section, Office of Air Quality 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:

#09-362 (APCB) Open Burning Regulations
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 IDEM 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 November 19, 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).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

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An [html](#) version of this document.