TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND 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) has developed draft rule language for amendments to 326 IAC 4-1 concerning open burning. By this notice, IDEM is soliciting public comment on the draft rule language. 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).

Continuation of First Notice of Comment Period: October 20, 2010, Indiana Register (DIN: 20101020-IR-326090362FCA).

CITATIONS AFFECTED: 326 IAC 4-1.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-9.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Open burning is the burning of any materials wherein contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber. Open burning activities may contribute to the formation of ground level ozone, which is a harmful pollutant that damages human health, vegetation, and buildings. Open burning activities produce smoke, which contributes to regional haze, visibility impairment, and fine particulates. Fine particles can reach levels that cause health problems including eye, nose, and throat irritation, lung irritation and congestion, and shortness of breath and coughing.

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 verbal 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. The types of open burning that may be considered by IDEM for an approval include burning for purposes of fire training and burning of natural growth derived from a clearing operation.

IDEM has determined that additional categories of open burning may be suitable for exemption from the current IDEM approval process. These new exemptions will relieve IDEM and the regulated community of unnecessary paperwork while continuing to protect the public and Indiana's environment. The additional categories are as follows:

- To amend 326 IAC 4-1-3(c)(4) to allow prescribed burning by municipalities and county governments (local jurisdictions) for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention. The current rule applies only to prescribed burns performed by the Department of Natural Resources (DNR), United States Department of the Interior, and United States Department of Agriculture Forest Service.
- To amend 326 IAC 4-1-3(c)(8) to clarify that the burning of clean petroleum products, natural gas, methane, or propane for fire training can be conducted using mobile training units.
- To amend 326 IAC 4-1-3(c) by adding criteria that would allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training.
- To amend 326 IAC 4-1-3(c) to allow the ceremonial burning of United States flags. IDEM intends for this exemption to allow for the respectful retirement of United States flags while minimizing emissions of pollutants during the burning process.
- To amend 326 IAC 4-1-4(2) to clarify that emergency burning is allowed with prior oral approval when there is an imminent hazard to health, safety, or the environment. The current rule allows emergency burning with prior oral approval when there is an imminent health or safety hazard following a natural disaster, such as a tornado, high winds, hail storm, earthquake, fires, flood, ice storm, or explosion. Ensuring that this rule covers

imminent environmental hazards would allow for timely burning of insect-infested trees, such as those infested with the emerald ash borer or the Asian longhorned beetle.

These exemptions and clarifications are not anticipated to increase the amount of open burning occurring in Indiana.

At this time IDEM is not proposing to amend the definition of "air curtain destructor" in 326 IAC 1-2-2.5 to allow the operation of an approved portable self-contained unit or 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. A Continuation of First Notice of Comment Period was published in the Indiana Register on October 20, 2010 (DIN: 20101020-IR-326090362FCA) to request comment on amendments to requirements for air curtain destructors (open pit trench burners). IDEM plans to follow up with a subsequent rulemaking to address air curtain destructors when information on operating conditions for portable self-contained units is available.

Upon completion of the rulemaking, this rule may be submitted to the United States Environmental Protection Agency for approval as a revision to the state implementation plan.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL element).

The following information is provided with each NIFL element:

(1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana and examples in which federal law is inadequate to provide this protection for Indiana.

(2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.

(3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable, health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element A: The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law": amend 326 IAC 4-1-3(c) to establish criteria for an exemption to allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training; amend 326 IAC 4-1-3(c)(8) to include an exemption to allow the burning of clean petroleum products, natural gas, methane, or propane for fire training using a stationary or mobile training unit; amend 326 IAC 4-1-3(c)(4) to include an exemption for prescribed burning by municipalities and county governments for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; and amend 326 IAC 4-1-3(c) to allow the ceremonial burning of United States flags.

(1) The amendments to the open burning rule are for administrative purposes only, IDEM does not anticipate any negative impact to the environment as a result of these amendments.

(2) These amendments to the open burning rule will reduce the amount of time that IDEM staff presently allocates to investigating and issuing open burning approvals. It will also reduce paperwork and time allocation requirements of the sources that routinely apply for open burning approvals. The criteria and conditions will still remain the same as currently contained in open burning approvals. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval.

(3) The current open burning rule and applications for approval from the open burning rules were used in the preparation of the draft rule language. The current open burning rule can be viewed at the following website:

http://www.in.gov/legislative/iac/T03260/A00040.PDF

The applications for open burning approvals can be viewed at the following website:

http://www.in.gov/idem/4980.htm

NIFL Element B: Amend 326 IAC 4-1-4(2) to clarify that environmental hazards are included that will allow for the emergency burning of insect-infested trees such as those infested with the emerald ash borer or the Asian longhorned beetle.

(1) The emergency burning rule has already been interpreted by IDEM to include the burning of insect-infested trees such as those infested with the emerald ash borer or the Asian longhorned beetle; therefore, the amendment to the emergency burning rule is for clarification purposes only.

(2) This rule amendment is expected to have no fiscal impact because the emergency burning rule has already been interpreted by IDEM to include the burning of insect-infested trees.

(3) The current open burning rule was used in the preparation of the draft rule language and can be viewed at the following website:

http://www.in.gov/legislative/iac/T03260/A00040.PDF

Potential Fiscal Impact

By amending the open burning approval process, IDEM will be able to substantially reduce the amount of staff time that is presently allocated to investigating and issuing approvals. The amendments will also reduce

paperwork and time allocation requirements of state and local governmental units that routinely apply for open burning approvals. Therefore, the fiscal impact is expected to be positive for both IDEM and those seeking approval. No increase or decrease in open burning is expected from these revisions.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 3, 2009, through July 6, 2009, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Fishers Fire Department (FFD)
Vigo County Agencies of Emergency Response (VCAER)
Explorer Pipeline Company (EPC)
Improving Kids' Environment (IKE)
Indiana Department of Homeland Security (IDHS)
Indiana Fire Instructors Association, Inc. (IFIA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Nearly all fire departments are comprised of three shifts and all three shifts need to be trained to the same level. Limiting fire departments to just two houses will cut out the third shift. Three houses per department is needed and possibly more for a recruit class. (FFD)

Response: The proposed revisions to the open burning rules at 326 IAC 4-1 are not intended to meet all of the fire training needs of a particular fire department. A fire department is not limited to burning two structures for fire training in a twelve month period. When more than two structures are required in a twelve month period, the fire department may apply to IDEM for approval from 326 IAC 4-1 to conduct the additional fire training.

Comment: Indiana Department of Homeland Security staff, IDEM and members of the fire service should come together to develop the guidance defining reasons why more than two structures should be burned in a calendar year. (IDHS, IFIA)

Response: IDEM has always welcomed the opportunity to work with any person or organization in an effort to better serve the citizens of Indiana by providing a cleaner and safer environment. IDEM has worked with the State Fire Marshall's Office in the past to propose the revisions to the open burning approvals and if this is still a concern for IDHS, IDEM is always willing to work with organizations to discuss this in further detail. The proposed rule still allows fire departments to apply to burn more than two structures per year for training purposes.

Comment: The wording of "municipal fire departments" at 326 IAC 4-1-3(c) needs to be changed to "all fire departments" since a majority of the fire departments are not municipal but volunteer or combination. (VCAER)

Comment: IDEM is proposing to amend 326 IAC 4-1-3(c) by adding criteria that would allow the burning of two single family, nondemolished dwellings per calendar year by municipal fire departments for the purposes of live fire training. The commenter proposes that the language be written to allow two burnings of nondemolished dwellings per calendar year without an IDEM permit by a "registered" fire department. This rule change would still require the fire department to comply with the preparation of the building according to IDEM protocols. A local fire department or fire training institution that operates fire/emergency response equipment that has been issued a fire department identification number (FDID) by the Indiana State Fire Marshal would be considered eligible for this exemption. "Municipal" would not include most volunteer fire departments organized within the state of Indiana. The way this language is written, it would prevent most volunteer fire departments from obtaining a variance for burning two nondemolished dwellings per calendar year. A department that uses this exemption must report to IDEM on an approved application at least 30 days before the burning is to occur. (IDHS, IFIA)

Response: The proposed revision to 326 IAC 4-1-3(c) to add criteria that will allow the burning of two single family, nondemolished structures per calendar year by municipal fire departments for the purposes of live fire training is not intended to relate to all training needs of all fire departments in the State of Indiana. Fire training has been an essential tool for both municipal and volunteer fire departments in providing protection in their respective areas of jurisdiction. Most of the training activities have not required the burning of a structure, and the majority of municipal and volunteer fire departments have either never applied to burn a structure or have applied for a limited number on an annual basis. Some fire departments have reported that available structures for fire training are limited or nonexistent.

Municipal fire departments will be held accountable for complying with all conditions. This includes notifying IDEM prior to the burning along with notification to the local health and sheriff's departments.

Comment: In reference to 326 IAC 4-1-3(c)(8), the wording should be changed to include fire departments using their mobile or stationary training units. (VCAER)

Comment: Amend 326 IAC 4-1-3(c)(8) to include an exemption to allow the burning of clean petroleum products, natural gas, methane, or propane for fire training conducted by the Indiana Department of Homeland

Security using its mobile training unit. The exemption should also allow for any permanent training facilities operated by local units of government or fire departments that only use clean petroleum products, natural gas, methane, or propane to conduct fire training. (IDHS, IFIA)

Response: The burning of clean petroleum products, natural gas, or propane for fire extinguisher training is already exempt provided the conditions noted in 326 IAC 4-1-3(c)(8) are followed. The burning of other materials for training purposes using mobile or stationary training units is not prohibited provided an approval is issued by IDEM. While not including mobile or stationary fire training units in the proposed revision to 326 IAC 4-1-3(c)(8) will not restrict, limit, or prohibit the use of these facilities for their intended purposes, IDEM has amended the language to clarify that mobile or stationary training units are included.

Comment: Explorer Pipeline owns and operates a 24-inch refined products pipeline and several multi diameter lateral lines in the State of Indiana. The pipeline transports refined products, mainly jet fuel, diesel, and gasoline, from the Gulf Coast into the Midwest region. The pipeline operates at rates of up to 14,350 gallons per minute and is designed for pressures up to 875 psi. Explorer's priorities are public safety, safety of the pipeline and service to customers. Due to the sensitive nature of the business, Explorer Pipeline requests that 60-day notice be given prior to any open burning in the vicinity of the pipeline to enable review and provide any necessary damage mitigation plans. (EPC)

Response: IDEM appreciates the comment and understands the concern. In the current open burning rules, there is already a provision at 326 IAC 4-1-3(c)(1)(F) that prohibits fires within five hundred (500) feet of a pipeline without IDEM approval and a provision at 326 IAC 4-1-4.1(d)(9)(B) that only allows fires within three hundred (300) feet of a pipeline if advance approval is received from IDEM. Therefore, IDEM does not feel that adding a provision that requires a 60-day notice to pipeline companies prior to open burning near a pipeline is necessary.

Comment: IKE understands the value of eliminating unnecessary paperwork. If there is truly no value added to a particular administrative step, then it makes sense to consider eliminating it. However, IKE is concerned that some of these proposed exemptions will encourage open burning, and therefore increase air pollution, when other options are available. Eliminating the need to seek a variance for certain types of open burning also eliminates the opportunity for IDEM to include the safety and air pollution precautions that are routinely made conditions of open burning variances. And while those conditions may be included in the rule language, there is less certainty that burners will know about those conditions, or pay serious attention to them, when they have not received an actual piece of paper from IDEM reminding them of those conditions. (IKE)

Response: IDEM agrees that following the conditions to exempt open burning is essential in protecting the environment and well-being of the citizens of Indiana. IDEM requires safety and air pollution precautions at 326 IAC 4-1-3(b) and within the new fire training exemption at 326 IAC 4-1-3(c)(9). Fire departments will need to follow the rule to understand the requirements and will be reminded of these conditions at that time instead of when they receive the paper approval from IDEM. Notification conditions in the rule will allow the opportunity for oversight prior to and during any exempt open burning activity.

Comment: Millions of Indiana citizens live in areas where air quality does not meet, or comes very close to not meeting, air quality standards for ozone and fine particles. IDEM should evaluate and explain the impact that these proposed changes would have on local air quality and public health in those areas. Open burning should be banned in nonattainment areas and at anytime there are air pollution alerts. (IKE)

Response: The revisions in the draft rule will not impact local air quality and public health because they are not expected to change the frequency or location of open burning activities. These revisions address the administrative function associated with open burning activities and will reduce paperwork and time allocation requirements of state and local governmental units that routinely apply for open burning approvals. IDEM has banned residential open burning in Lake, Porter, Clark, and Floyd counties as part of a strategy to reduce associated pollutants in these areas. Burning activities conducted under the exemptions in 326 IAC 4-1-3(c) are not allowed on days when a pollution alert or air quality action day has been declared.

Comment: Restrictions on open burning are part of the attainment or maintenance plans for some counties. IDEM should identify what impacts these proposed changes would have on federal approval of the clean air plans. (IKE)

Response: IDEM does not anticipate any impact on the federal approval of the clean air plans as a result of the proposed changes to the open burning rules since the revisions in the draft rule address administrative functions associated with open burning approvals. IDEM does not believe the draft revisions will lead to more open burning.

Comment: Fire training on undemolished dwellings is undoubtedly in the public interest and IKE is not opposed to it. However, to allow each municipal fire department up to two single-family nondemolished dwellings for fire training could lead to substantially more open burning in our neighborhoods than currently exists, more than may be necessary to assure appropriate training. The First Notice states that IDEM processes approximately 130 approvals for fire training each year. Can fire departments combine their training exercises (as was suggested a number of years ago when the suggestion was made that each fire department be permitted to conduct training on one vehicle per year)? (IKE)

Response: IDEM appreciates the comment and, in all cases, encourages multi-department participation in

any fire training approval issued.

Comment: The proposed exemption for city or town highway departments to open burn wood products derived from pruning roadsides needs further consideration. This material has value. It can be chipped into mulch or composted and either sold or used in city or town landscaping activities. Unless the burning is to occur at the side of the road, it is likely that brush will be already compacted or cut in some way for easier, more efficient transportation. The current open burning statute allows the burning by county highway departments of "wood products derived from pruning or clearing a roadside by a county highway department," IC 13-17-9-1(a)(3). This proposal could greatly expand the amount of burning that could occur in Indiana cities and towns. The First Notice of Comment Period does not indicate how many approvals are generally granted to local governments, or how many requests are routinely received by the department. How much brush does the department estimate will be burned as a result of this change? What is the expected air pollution and public health impact from this additional burning? Have local governments requested this exemption? (IKE)

Response: IDEM does not have an estimate of how much brush will be burned as a result of this change, but does not anticipate a change in air pollution or a public health impact from this additional burning because the change only affects the administrative requirements associated with open burning activities. After further consideration, IDEM is not proposing to include the burning of wood products derived from the pruning or clearing a roadside by a city or town as an exempt activity because of the close proximity of residences in cities and towns.

Comment: The proposed exemption for local jurisdictions to do prescribed burning warrants further discussion. What does IDEM mean by "local jurisdictions"? The entities currently allowed to conduct prescribed burning are the Indiana Department of Natural Resources, the U.S. Department of the Interior, and the U.S. Department of Agriculture Forestry Service. These are agencies with considerable experience and expertise in knowing when prescribed burning is appropriate. There is no assurance that the "local jurisdictions" IDEM proposes to exempt here would have any expertise in these issues and the purposes stated in the exemption ("wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention") are significantly broad to allow substantial burning for what could be essentially a convenience. (IKE)

Response: IDEM has changed "local jurisdictions" to "municipalities and county governments." IDEM believes that these entities have the experience and expertise required to conduct prescribed burning. This amendment will reduce paperwork and time allocation requirements of municipalities and county governments that routinely apply for open burning approvals to conduct prescribed burns and will reduce the amount of staff time that is presently allocated to investigating and issuing open burning approvals.

Comment: IKE agrees that the proposed changes for burning in the case of an emergency, such as infested trees, and to allow fire training by the Indiana Department of Homeland Security mobile van under the conditions described in the First Notice of Comment Period make sense. (IKE)

Response: IDEM agrees with the commenter. The emergency burning rule has already been interpreted by IDEM to include the burning of insect-infested trees such as those infested with the emerald ash borer; therefore, this amendment is for clarification purposes only. IDEM is also allowing fire training using a mobile or stationary unit where clean petroleum products, natural gas, methane, or propane is burned.

Comment: Any department that desires to burn a building with this exemption must be in compliance with Indiana Department of Homeland Security reporting requirements for Indiana Fire Incident Reporting System and National Incident Management System. Indiana Department of Homeland Security and the Indiana Fire Instructors Association recommend that compliance with the most recent version of National Fire Protection Act 1403 be required for any fire department granted a variance to conduct burning for training purposes. (IDHS, IFIA)

Response: IDEM supports compliance with National Fire Protection Act 1403 guidelines, and addresses compliance with other federal, state, or local laws at 326 IAC 4-1-3(c)(9)(G).

Comment: The Indiana Department of Homeland Security and Indiana Fire Instructors Association recommend a three year exemption for permanent fire training facilities that use Class A fuel. Provisions should be included in the rule that prevent the burning for training whenever a clean air alert has been issued by the appropriate authority. An application process should be established for a training site to apply for and be approved by Indiana Department of Homeland Security for the exemption prior to being submitted to IDEM for approval. (IDHS, IFIA)

Response: Stationary training facilities already have the option of applying for a multiple year approval (326 IAC 4-1-4.1(e)) to conduct fire training and the standard conditions in any approval have always been to not burn during periods of unfavorable meteorological conditions, where a burn ban has been declared, or when a pollution alert has been declared.

IDEM encourages and welcomes Indiana Department of Homeland Security participation in the approval process; however, enforcement of Indiana Department of Homeland Security requirements related to fire training is better suited for that office.

Comment: There is no provision in the law to allow live burn training facilities (shipping containers) to exist and burn clean Class B fuel such as hay, straw and/or clean wood. The Indiana Firefighter Training System has purchased several of this type of facility to allow firefighters to conduct live fire training in a safe manner. The

position of Indiana Department of Homeland Security and Indiana Fire Instructors Association is that the rule must be drafted to allow for these facilities to be legal. (IDHS, IFIA)

Response: IDEM does not provide the authority for the existence of live burn training facilities. The open burning rule allows for any person to apply for fire training approval, including at these types of facilities.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

IDEM requested public comment from June 30, 2010, through July 30, 2010, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language concerning the ceremonial burning of the United States flag. IDEM received no comments in response to the Continuation of First Notice of Comment Period.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

IDEM requested public comment from October 20, 2010, through November 19, 2010, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language concerning the operation of portable self-contained air curtain destructors. IDEM received no comments in response to the Continuation of First Notice of Comment Period.

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 draft rule. Mailed comments should be addressed to:

#09-362 (APCB) Open Burning
Susan Bem Mail Code 61-50
Rule and SIP 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 March 18, 2011.

Additional information regarding this action may be obtained from Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality, 317-233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-1-3 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12; IC 13-17-9

Sec. 3. (a) IC 13-17-9 exempts certain types of open burning for maintenance purposes listed as follows:
(1) A person may open burn the following:
(A) Vegetation from any of the following:
(i) A farm.
(ii) An orchard.
(iii) A nursery.
(iv) A tree farm.
(v) A cemetery.
(vi) A drainage ditch.
(vii) Agricultural land, if the open burn occurs in an unincorporated area.
(B) Wood products derived from the following:

(i) Pruning or clearing a roadside by a county highway department.
(ii) The initial clearing of a public utility right-of-way so long as the open burn occurs in an unincorporated area.
(C) Undesirable:
(i) wood structures on real property; or
(ii) wood remnants of the demolition of a predominantly wooden structure originally located on real property;
located in an unincorporated area.
(D) Clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way, but not including railroad ties.
(2) All open burning that is allowed under this subsection must comply with the following conditions:
(A) A person who open burns shall extinguish the fire if the fire creates a nuisance or fire hazard.
(B) Burning may not be conducted during unfavorable meteorological conditions such as any of the following:
(i) High winds.
(ii) Temperature inversions.
(iii) Air stagnation.
(C) All fires must be attended at all times during burning until completely extinguished.
(D) All asbestos-containing materials must be removed before the burning of a structure.
(E) Asbestos containing materials may not be burned.

(b) The types of fires identified in subsection (c) are allowed under this rule. Unless specified otherwise, the following conditions apply to any fire allowed by this subsection:
(1) Fires must be attended at all times and until completely extinguished.
(2) If at any time a fire creates a:
(A) pollution problem;
(B) threat to public health;
(C) nuisance; or
(D) fire hazard;
it shall be extinguished.
(3) No burning shall be conducted during unfavorable meteorological conditions such as any of the following:
(A) High winds.
(B) Temperature inversions.
(C) Air stagnation.
(D) When a pollution alert or ~~ozone~~ **air quality** action day has been declared.
(4) All burning shall comply with other federal, state, and local laws, rules, and ordinances.
(5) Adequate firefighting equipment shall be on-site for extinguishing purposes during burning times.
(6) Burning shall be conducted during daylight hours only, and all fires shall be extinguished before sunset.

(c) The following types of fires are allowed:
(1) Recreational or ceremonial fires, such as fires for scouting activities, and fires used for cooking purposes, such as camp fires, subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:
(A) Only:
(i) clean wood products;
(ii) paper;
(iii) charcoal; or
(iv) clean petroleum products;
may be burned.
(B) **Any person conducting recreational or ceremonial fires shall notify** the local fire department and health department ~~must be notified~~ at least twenty-four (24) hours ~~before~~ **prior to** any burning ~~where~~ **if** the size of the pile being burned is more than one hundred twenty-five (125) cubic feet **and include the date, time, and location of the burning.**
(C) Fires shall:
(i) not be ignited more than two (2) hours before the recreational activity is to take place; and
(ii) be extinguished upon conclusion of the activity.
(D) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet and only one (1) pile may be burned at a time.
(E) The fires shall not be used for disposal purposes.
(F) Fires shall not ~~take place~~ **be located** within five hundred (500) feet of any fuel storage area or pipeline.
(2) Private residential burning, where the building contains four (4) or fewer dwelling units. Burning is

prohibited in apartment and condominium complexes and mobile home parks. Beginning June 23, 1995, residential open burning is prohibited in the counties listed in section 4.1(c) of this rule. Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Burning shall be in a noncombustible container that:

(i) is sufficiently vented to induce adequate primary combustion; and

(ii) has enclosed sides and a bottom.

(B) Only clean wood products and paper may be burned.

(3) Waste oil burning where waste oil originates from spillage during testing of an oil well and has been collected in a properly constructed and located burn off pit as prescribed in 312 IAC 16-5-11 in the natural resources commission rules. Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Each oil pit may be burned once every two (2) months.

(B) The fire must be extinguished within thirty (30) minutes of ignition.

(4) Department of natural resources (DNR) burning, to facilitate prescribed burning on DNR controlled properties for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; **burning by municipalities and county governments, to facilitate prescribed burning for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention;** United States Department of the Interior burning, to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore, for example; and United States Department of Agriculture, Forest Service burning, to facilitate wildlife habitat maintenance, forestry purposes, natural area management, ecosystem management, and firefighting or prevention. Burning shall be subject to conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) If the fire creates a:

(i) nuisance;

(ii) fire hazard; or

(iii) pollution problem;

it shall be extinguished.

(B) No burning shall be conducted during unfavorable meteorological conditions, such as any of the following:

(i) High winds.

(ii) Temperature inversions.

(iii) Air stagnation.

(iv) When a pollution alert or ozone action day has been declared.

(C) Only vegetation and clean petroleum products may be burned.

Burning by the U.S. Forest Service for firefighting or prevention is not subject to the conditions in subsection (b) or this subdivision.

(5) Burning of marijuana by federal, state, and local law enforcement offices. Burning shall be subject to the conditions in subsection (b) and only clean petroleum products shall be used for ignition purposes.

(6) Burning, for the purpose of heating, using clean wood products or paper in a noncombustible container that is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) Burning shall only occur between October 1 and May 15.

(B) Burning shall not be conducted for the purpose of disposal.

(7) Burning of vegetation by fire departments and firefighters to create fire breaks for purposes of extinguishing an existing fire. Such burning is not subject to the conditions in subsection (b).

(8) Burning of clean petroleum products, natural gas, methane, or propane for fire extinguisher training, **including mobile or stationary training units,** subject to the conditions in subsection (b) and the following conditions:

(A) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.

(B) Except as provided in clause (C), daily fuel volume amounts burned are limited to one (1) of the following:

(i) Fourteen (14) gallons of clean petroleum products.

(ii) Two hundred twelve (212) gallons of propane.

(iii) Twenty-nine thousand seven hundred (29,700) cubic feet of natural gas or methane.

(C) A combination of the fuels listed in clause (B) may be burned each day. The amount of each fuel that can be burned each day shall be determined as follows:

(i) The volume of each fuel to be burned each day shall be calculated as a percentage of the maximum volume allowed in clause (B) for that fuel.

(ii) The sum of the percentages for each fuel burned each day shall not exceed one hundred percent (100%).

(D) All burning of clean petroleum products shall take place in a noncombustible container or enclosure that has enclosed sides and a bottom.
(E) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination or uncontrolled spread of the fire.
(F) Only one (1) fire may be allowed to burn at a time.

(9) Burning of two (2) single family, nondemolished structures per calendar year by municipal fire departments for purposes of live fire training, subject to the conditions in subsection (b) and the following conditions:

(A) Written notification must be submitted to the Indiana department of environmental management, office of air quality at least thirty (30) days prior to the burning with the date, time, and location of the burning included. A copy of the notification shall be made available at the burning site to state and local officials upon request.
(B) The fire department conducting the fire training must provide written notification to each interested party or person owning or renting property within five hundred (500) feet of the structure to be burned at least fifteen (15) days prior to the training activity or publish a notice of intent to burn in the local newspaper at least fifteen (15) days prior to the training activity.
(C) The fire department must notify the county health department and county sheriff's department at least twenty-four (24) hours prior to the burning and include the date, time, and location of the burning.
(D) All asbestos-containing materials, asphalt roofing including backer paper, and vinyl siding including Styrofoam backer insulation must be removed before the intentional burning of any structure. These materials may not be burned and must be handled or disposed of in accordance with applicable requirements.
(E) Mercury switches and fluorescent bulbs must be removed from the house and properly recycled or disposed of in a properly permitted municipal solid waste facility.
(F) No burning shall take place within one hundred (100) feet of a structure or power line or three hundred (300) feet of a frequently traveled road, fuel storage area, or pipeline.
(G) All burning must comply with other federal, state, or local laws, regulations, or ordinances, including 40 CFR 61, Subpart M* (National Emissions Standards for Asbestos).

(10) Ceremonial burning of United States flags, subject to the conditions in subsection (b) and the following conditions:

(A) Any person conducting ceremonial burning of United States flags shall notify the local fire department and health department at least twenty-four (24) hours prior to any burning if the size of the pile being burned is more than one hundred twenty-five (125) cubic feet and include the date, time, and location of the burning.
(B) Fires shall:
(i) not be ignited more than two (2) hours before the activity is to take place; and
(ii) be extinguished upon conclusion of the activity.
(C) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet, and only one (1) pile may be burned at a time.
(D) Fires shall not be located within five hundred (500) feet of any fuel storage area or pipeline.

***This document is incorporated by reference. Copies 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, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Air Pollution Control Board; 326 IAC 4-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2419; filed May 24, 1995, 10:00 a.m.: 18 IR 2408; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3341; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Mar 21, 2007, 2:48 p.m.: 20070418-IR-326050268FRA)

SECTION 2. 326 IAC 4-1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-1-4 Emergency burning

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12; IC 13-17-9

Sec. 4. Emergency burning with prior oral approval of the commissioner or the commissioner's designated

agent may be authorized for the following:

(1) spilled or escaping liquid or gaseous petroleum products when all reasonable efforts to recover the spilled material have been made and failure to burn would result in an imminent fire or health hazard or air or water pollution problem; or

(2) clean wood waste, vegetation, or deceased animals resulting from a natural disaster where failure to burn would result in an imminent health, ~~or~~ safety, **or environmental** hazard.

The commissioner or the commissioner's designated agent shall issue a written approval within seven (7) days of the oral approval. The written approval shall contain any conditions on emergency burning that the commissioner established in the oral approval.

(Air Pollution Control Board; 326 IAC 4-1-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2420; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3343; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

Notice of Public Hearing

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