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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-316

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PERMIT BY RULE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2](#) concerning the permit by rule (PBR) air permitting program. 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 2](#).

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

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

On March 10, 1994, the Indiana Air Pollution Control Board (APCB) adopted rules (17 IR 2248, July 1, 1994) to implement the Part 70 (Title V) air operating permit program. This permitting program, which all states were required to adopt pursuant to Title V of the 1990 Clean Air Act Amendments, requires comprehensive operating permits be issued to all major sources of air emissions. Because potential to emit (PTE) is used to determine Title V applicability, the program as developed by the United States Environmental Protection Agency (U.S. EPA), required many types of small facilities that had not traditionally been subject to air permitting requirements to obtain an operating permit. In many cases these sources had not been subject to state or federal air pollution control requirements and did not have air pollution control equipment. However, when their PTE was calculated these sources exceeded permitting thresholds.

The department developed the permit by rule (PBR) program as a mechanism that could be used by sources with very small actual air emissions to limit their PTE without the use of control equipment and, therefore, eliminate the need for a Title V operating permit. Indiana's current PBR regulations are codified at [326 IAC 2-10](#) (Permit by Rule) and [326 IAC 2-11](#) (Permit by Rule for Specific Source Categories).

The APCB adopted Indiana's PBR regulations at [326 IAC 2-10](#) on June 5, 1996. Under [326 IAC 2-10](#), as long as a source meets the two conditions listed in the rule (that actual emissions are less than 20% of the Title V thresholds and that air pollution control equipment is not used to limit emissions), it is considered to have limited its potential emissions and becomes exempt from Title V requirements. A source operating under the PBR provisions at [326 IAC 2-10](#) is required to obtain a construction permit; however, no operating permit application, notice, fee, or other paperwork is required from a source. The only obligation is to demonstrate that the source is in compliance with the two conditions of the rule upon request of the department.

The APCB adopted additional PBR regulations for specific source categories in [326 IAC 2-11](#) on November 6, 1996. PBR provisions were added for gasoline dispensing operations (20 IR 2316, June 1, 1997), grain elevators (20 IR 2107, May 1, 1997), and grain processing or milling sources (20 IR 2108, May 1, 1997).

On December 4, 2007, the IDEM submitted a request to approve into the state implementation plan (SIP) Indiana's PBR provisions at [326 IAC 2-10](#) and [326 IAC 2-11](#). Following that submittal, U.S. EPA identified several issues regarding the approvability of Indiana's current PBR provisions. The department withdrew the December 4, 2007, PBR SIP submittal from U.S. EPA consideration in a letter dated December 14, 2010.

In this rulemaking the department is proposing to update and clarify the PBR provisions in [326 IAC 2](#). The department is considering rule changes to address U.S. EPA approvability issues regarding Indiana's PBR provisions. Amendments to these rules may include adding notification requirements, adding supplementary record keeping and reporting requirements, updating emission factors or throughput limits, and general clarification and cleanup of rule language. IDEM is seeking comments on proposed changes to the air permitting review rules at [326 IAC 2](#) and any other rules that may be affected in 326 IAC by this proposed rulemaking. IDEM is also requesting comments on the potential fiscal impact that this proposed rulemaking may have on sources currently operating under the PBR regulations. Upon completion, the department plans to submit this rule to U.S. EPA for approval into the SIP.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend [326 IAC 2-10](#) and [326 IAC 2-11](#) to include notification requirements, record keeping and reporting requirements, updated emission factors or throughput limits, and complete general clarification and cleanup of rule language.

- 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 not imposed by federal law and there is no comparable federal law.

- 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. Amend rules in Title 326 to clarify and update existing rule language regarding Indiana's PBR provisions.

- 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 not imposed by federal law and there is no comparable federal law.
- 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. No rulemaking.

- 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**

40 CFR 70 (State Operating Permit Program) provides the minimum elements required by the Clean Air Act for state operating permit programs and the corresponding standards and procedures by which the U.S. EPA Administrator will approve, oversee, and withdraw approval of state operating permit programs. This rulemaking will address U.S. EPA approvability issues with Indiana's PBR provisions, which will allow smaller sources in Indiana to operate under the PBR provisions instead of the more costly and administratively burdensome Title V operating permit.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative may have a fiscal impact on sources that currently operate under Indiana's PBR provisions. Sources may have increased administrative costs resulting from new record keeping and reporting requirements. At this time, the department does not know what requirements will be included in the draft rule language, making it difficult to determine administrative costs to sources.

Additionally, if the department updates emission factors or throughput limits for the PBR provisions, some sources currently operating under the PBR provisions at [326 IAC 2-10](#) and [326 IAC 2-11](#) may be required to obtain an operating permit under one of the department's other permitting programs, such as a source specific operating agreement (SSOA), federally enforceable state operating permit (FESOP), or Title V. If a source is required to obtain an operating permit under another permitting program, they will incur the costs necessary to obtain a permit under the applicable permitting program. IDEM is requesting comments on the potential fiscal impact that this proposed rulemaking may have on sources currently operating under the PBR regulations at [326 IAC 2-10](#) and [326 IAC 2-11](#).

Potential Fiscal Impact of Alternative 2. The department anticipates minimal fiscal impact for this alternative. Rule amendments will likely remove obsolete rule language or clarify existing rule language relating to the department's PBR provisions in Title 326.

Potential Fiscal Impact of Alternative 3. No fiscal impact.

### **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](mailto: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](mailto: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 Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-8628 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:

#11-316 (APCB) PBR Amendments  
Amy Smith 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 July 1, 2011.

Additional information regarding this action may be obtained from Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

*Posted: 06/01/2011 by Legislative Services Agency*

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