
TITLE 326 AIR POLLUTION CONTROL BOARD**Proposed Rule**
LSA Document #09-362**DIGEST**

Amends [326 IAC 4-1-3](#) and [326 IAC 4-1-4](#) concerning open burning. Effective 30 days after filing with the Publisher.

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](#)).

Second Notice of Comment Period: February 16, 2011, Indiana Register (DIN: [20110216-IR-326090362SNA](#)).

Notice of First Hearing: February 16, 2011, Indiana Register (DIN: [20110216-IR-326090362PHA](#)).
Date of First Hearing: May 4, 2011.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on February 16, 2011, at DIN: [20110216-IR-326090362SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from February 16, 2011, through March 18, 2011, on IDEM's draft rule language. IDEM received comments from the following parties:

City of Indianapolis, Department of Public Works (INDPLS)

Indiana Chapter of the Nature Conservancy (NC)

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

Comment: The commenter supports the inclusion of "municipalities and county governments for prescribed burning. (INDPLS)

Response: IDEM appreciates the support. This will reduce staff time and unnecessary paperwork for both IDEM and local government.

Comment: The commenter does not support open burning provisions for trees infested with the emerald ash borer as a means of control or disposal in Marion County or quarantined areas. Current quarantine laws are adequate. IDEM should promote alternatives to emergency burning such as taking ash debris to certified locations for disposal. How will IDEM verify proper pest diagnosis prior to granting any oral approval? A state-wide declaration could adversely impact Marion County. A local ordinance could be overlooked or superseded by a state rulemaking. The commenter encourages a close partnership with IDEM to ensure the needs of all communities are met. (INDPLS)

Response: All emergency burn requests are evaluated for ambient air quality impacts before granting approvals. The revisions to the emergency burning rule at [326 IAC 4-1-4](#) do not change the requirement to seek approval before conducting any emergency related burning. This includes emergency burning as the result of environmental hazards, such as with insect-infested trees, including those infested with the emerald ash borer or the Asian longhorned beetle. IDEM will continue to work with the Department of Natural Resources, Division of Entomology and Plant Pathology, to identify and verify requests for emergency burning associated with the emerald ash borer. A local ordinance can be more stringent than state rules and is not superseded by a state rule. Individuals are responsible for ensuring compliance with all applicable federal, state, and local requirements.

Comment: The Nature Conservancy should be included with the list of entities allowed to open burn to facilitate management of wildlife habitat, natural areas, and forestry purposes. The Nature Conservancy frequently submits and is granted approvals for open burning of natural vegetation and uses fully trained and qualified staff for prescribed burns. (NC)

Response: While the Nature Conservancy is a not-for-profit company that may have a very robust training program and standard operating procedures for open burning, IDEM cannot include an individual company on the list of entities allowed to open burn without approval from the department under [326 IAC 4-1-3\(c\)\(4\)](#). IDEM still needs the ability to review requests from nongovernmental units or companies before granting approvals for

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 4, 2011, the Air Pollution Control Board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 4-1](#). Comments were made by the following parties:

Indiana Chapter of the Nature Conservancy (NC)

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

Comment: The Nature Conservancy wants to be added to the list of entities that are allowed to burn without needing approval from IDEM to conduct the open burning. Many of the reasons for wanting to be included are the same as what would be for including municipalities and county governments. An exemption from the approval process would reduce the amount of staff time necessary for the Nature Conservancy and for IDEM to process the approval. The Nature Conservancy regularly applies and is granted approvals for open burning of natural vegetation. The Nature Conservancy would still have to follow the rules for open burning, such as not burning in proximity to roads or utility rights of way. IDEM responded previously to this request that the Nature Conservancy is a nongovernment entity and that IDEM felt that it couldn't include the Nature Conservancy within those amendments to those rule changes.

The Nature Conservancy brought up two points in regards to this issue. At [326 IAC 4-1-1](#), a person may open burn the following for maintenance purposes: vegetation from a farm, an orchard, a nursery, a tree farm, and vegetation from agricultural land if the burning occurs in an unincorporated area. There is no definition for "agricultural land" within [326 IAC 4](#). Other areas of the Indiana Administrative Code lists "agricultural land" as land reserved for conservation purposes. It also considers "agricultural land" as land assessed as "agricultural land" under real property assessment rules and guidelines of the Department of Local Government Finance. The Nature Conservancy's property tax parcel bills classify Nature Conservancy land as agricultural land.

The second point is in regards to IDEM's comments about not being able to add the Nature Conservancy to the list of entities because it is a nongovernment organization. There are other areas within the Indiana Administrative Code where nongovernment entities have been included. One example is within the exemption of building, land and personal property for various purposes under property tax bills, so nonprofit entities can be exempt from taxes on buildings on land owned by nonprofit entities.

Response: At preliminary adoption the board voted to add the Nature Conservancy to the exemption list at [326 IAC 4-1-3\(c\)\(4\)](#) with the understanding that IDEM will look into the legality of such language. Before final adoption, IDEM will consult internally with the Office of Legal Counsel and the Compliance and Enforcement Branch and with the Indiana Office of Attorney General to make a decision on how to address the concerns related to the "agricultural land" exemption and the ability to add the Nature Conservancy to the exemption list.

[326 IAC 4-1-3](#); [326 IAC 4-1-4](#)

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 **shall be extinguished if at any time it** 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 **the following may be burned**:

(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, county governments, and the Nature Conservancy 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 **shall be extinguished if it** 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 the applicable rules of the solid waste management board at [329 IAC 10](#) and [329 IAC 11](#).
 - (E) Mercury containing equipment and fluorescent bulbs must be removed from the house and properly recycled or disposed of in accordance with the applicable rules of the solid waste management board at [329 IAC 10](#).
 - (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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