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**TITLE 326 AIR POLLUTION CONTROL DIVISION****SECOND NOTICE OF COMMENT PERIOD**

LSA Document #12-500

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING AIR PERMITS AND THE PROTECTION OF AMBIENT AIR QUALITY STANDARDS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 2-1.1-5](#), [326 IAC 2-5.1-3](#), and [326 IAC 2-6.1-5](#) concerning requirements for the protection of ambient air quality standards in construction permits. 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: August 29, 2012, Indiana Register (DIN: [20120829-IR-326120500FNA](#)).

**CITATIONS AFFECTED:** [326 IAC 2-1.1-5](#); [326 IAC 2-5.1-3](#); [326 IAC 2-6.1-5](#).

**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**

Rule section [326 IAC 2-1.1-5](#) contains provisions applicable to all air quality permitting rules including requirements for the protection of ambient air quality standards. The general provisions at [326 IAC 2-1.1](#) provide a road map for specific air permitting requirements located in other rules in Article 2 for construction, operation, and modification of sources. Currently, the language at [326 IAC 2-1.1-5](#) prohibits IDEM from issuing a permit if the commissioner determines that the permit would allow a source to "cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS)". The current rule language could potentially be interpreted to include all operating permits and renewals. The Clean Air Act does not require that operating permits create new applicable emission limitations and instead contemplates that the applicable requirements already created in permits for new construction or construction modification are incorporated into the source operating permit. Also, federal rules at 40 CFR 51, Subpart I, apply specifically to review of new sources and modifications. The basis for the requirements in [326 IAC 2-1.1-5](#) are from IDEM's original air permit construction rules that were approved into Indiana's state implementation plan (SIP).

Before [326 IAC 2-1.1](#) (General Provisions), [326 IAC 2-5.1](#) (Construction of New Sources), [326 IAC 2-5.5](#) (Registrations), and [326 IAC 2-6.1](#) (Minor Source Operating Permit) were developed in 1998 (LSA Document #98-95, filed November 25, 1998), all construction and operating permit requirements were contained in [326 IAC 2-1](#), which has been repealed, but the federally approved version is still effective in Indiana's SIP (<http://www.epa.gov/region5/air/sips/index.html>). The basis for the air quality requirements in [326 IAC 2-1.1-5](#) is contained in [326 IAC 2-1-3\(b\)](#) as it existed before its repeal in 1998. The provisions in [326 IAC 2-1-3\(b\)](#) limited issuance of construction permits to those that did not interfere with attainment or maintenance of ambient air quality standards. Repealed language in [326 IAC 2-1-5\(a\)](#) also provided for establishing emission limitations in construction and operating permits for the purpose of ensuring attainment and maintenance of ambient air quality standards.

IDEM is proposing to amend [326 IAC 2-1.1-5](#) to clarify that its applicability is limited to preconstruction approvals for construction or modification of sources or emission units similar to requirements in repealed rules at [326 IAC 2-1](#). The original language at [326 IAC 2-1-3\(b\)](#) and its "mandatory" nature of demonstrating attainment and maintenance of ambient air quality standards only applied to construction permits. The proposed revisions will continue to reflect Clean Air Act permitting requirements and the federally approved SIP. IDEM is also proposing to amend [326 IAC 2-5.1-3\(e\)](#) (construction permits) to change the applicable emission limitation requirement from applying in "this article" to "this rule" and to amend [326 IAC 2-6.1-5\(a\)\(1\)](#) (minor source operating permits). Rule 6.1 is an operating permit program and not all permit actions under this rule require preconstruction approval where compliance with the NAAQS would be required. The language currently at [326 IAC 2-6.1-5\(a\)\(1\)\(D\)](#) requiring compliance with all requirements in Title 326 and the Clean Air Act covers all necessary requirements. IDEM is requesting comment on the proposed amendments and any other provisions of Title 326 that may be affected by this rulemaking.

**[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 rulemaking revises general air permitting requirements to

remove language restricting permit issuance if the permit would allow a violation of the NAAQS. This language was inadvertently added in a previous rulemaking.

#### **Potential Fiscal Impact**

There is no cost associated with this rulemaking.

#### **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 Development Section, Office of Legal Counsel at (317) 233-5697 or (800) 451-6027 (in Indiana).

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from August 29, 2012, through September 28, 2012, 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:

B Paul Consulting on behalf of SO<sub>2</sub> Project (BP)

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

*Comment:* The commenter supports the amendments to [326 IAC 2-1.1-5](#), [326 IAC 2-5.1-3](#), and [326 IAC 2-6.1-5](#) to clarify that the requirement for IDEM to assure the permit will not allow a source to cause or contribute to a violation of the NAAQS is limited to major and minor new source review actions. Clean Air Act Section 110 requires such prohibitions only for construction permitting. The commenter supports IDEM's decision to revise the Indiana rules so they are once again consistent with the current U.S. EPA approved SIP. (BP)

*Response:* IDEM appreciates the support.

#### **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. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #12-500 Air Permitting and NAAQS Protection  
Susan Bem Mail Code 61-49  
Rule Development Section  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-8903.

(3) By electronic mail to [sbem@idem.in.gov](mailto:sbem@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped no later than March 8, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Susan Bem, Rule Development Section, Office of Legal Counsel, (317) 233-5697 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. [326 IAC 2-1.1-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[326 IAC 2-1.1-5](#) Air quality requirements**

**Authority:** [IC 13-14-8](#); [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) ~~The commissioner~~ **Preconstruction approval** shall not issue a registration, permit, ~~be issued to any person for construction or modification approval, or operating permit revision under this article of any source or emission unit if the commissioner determines the terms and conditions of the registration, permit, that the construction or modification approval, or operating permit revision:~~ **will interfere with attainment or maintenance of any National Ambient Air Quality Standards (NAAQS) set forth in [326 IAC 1-3](#) because the approval does not:**

~~(1) would allow a source to cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS);~~

~~(2) would allow a violation of a PSD maximum allowable increase;~~

**(1) comply with the requirements of [326 IAC 2-2](#) for construction or modification of a major stationary source or major modification as defined in [326 IAC 2-2](#) that is or will be located in an attainment or unclassified area under [326 IAC 1-4](#);**

**(2) comply with the requirements of [326 IAC 2-3](#) for construction or modification of a major stationary source or major modification as defined under [326 IAC 2-3](#) that is or will be located in a nonattainment area under [326 IAC 1-4](#);**

~~(3) do not assure~~ **ensure** compliance with all applicable air pollution control rules, except as provided by an enforceable compliance schedule; or

~~(4) are not protective of the~~ **protect** public health.

(b) ~~The commissioner~~ **Emission limitations** may require any source to perform an air quality analysis to demonstrate compliance with **be established as conditions of construction and operating permits for any source or emission unit for the purpose of ensuring that:**

**(1) the NAAQS and the PSD standards are attained and maintained; and**

**(2) the public health is protected.**

**In some cases, requirements for the establishment of emission limitations are set forth in other rules under this title.**

*(Air Pollution Control Division; [326 IAC 2-1.1-5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 990)*

SECTION 2. [326 IAC 2-5.1-3](#) IS AMENDED TO READ AS FOLLOWS:

### **[326 IAC 2-5.1-3](#) Permits**

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

**Affected:** [IC 13-15-4-9](#); [IC 13-17](#)

Sec. 3. (a) On and after December 25, 1998, a new source must obtain a construction permit prior to beginning construction of an emissions unit under either of the following conditions:

(1) The potential to emit is equal to or greater than the following:

(A) One (1) ton or more per year of lead or lead compounds measured as elemental lead and the source is one (1) of the following:

(i) A primary lead smelter.

(ii) A secondary lead smelter.

(iii) A primary copper smelter.

(iv) A lead gasoline additive plant.

(v) A lead-acid storage battery manufacturing plant that produces two thousand (2,000) or more batteries per day.

(B) Five (5) tons or more per year of lead or lead compounds measured as elemental lead and the source is not listed in clause (A).

(C) One hundred (100) tons per year of carbon monoxide (CO).

(D) Ten (10) tons per year of any single HAP or twenty-five (25) tons per year of any combination of HAPs listed pursuant to Section 112(b) of the CAA.

(E) Twenty-five (25) tons per year of the following regulated air pollutants:

(i) PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.

(ii) Sulfur dioxide (SO<sub>2</sub>).

(iii) Nitrogen oxides (NO<sub>x</sub>).

(iv) VOC.

(v) Hydrogen sulfide (H<sub>2</sub>S).

(vi) Total reduced sulfur (TRS).

- (vii) Reduced sulfur compounds.
- (viii) Fluorides.

(2) The source belongs to any of the following source categories:

- (A) A source consisting of a chromium electroplating tank, chromium anodizing tank, or an operation subject to [326 IAC 20-8](#). Sources consisting only of decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent that are subject to section 2 of this rule are not included.
- (B) A source that includes medical waste incinerators subject to 40 CFR 60, Subpart Ec\*.
- (C) Area or minor sources that include an emission unit or units that require a Part 70 operating permit under [326 IAC 2-7](#).

(b) Any person proposing the construction of a new source and required to obtain a construction permit under subsection (a), including any source or emissions unit that is subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#), shall prepare and submit a permit application to the commissioner in accordance with subsection (c).

(c) At a minimum, an application shall include the following information:

(1) The company name and address.

(2) The following descriptive information:

- (A) A description of the nature and location of the proposed construction.
- (B) The design capacity and typical operating schedule of the proposed construction.
- (C) A description of the source and the emissions unit or units comprising the source.
- (D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction of the source.

(4) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in [326 IAC 1-3](#), or the prevention of significant deterioration maximum allowable increase under [326 IAC 2-2](#):

- (A) Information on the nature and amount of the pollutants to be emitted, including an estimate of the potential to emit any regulated air pollutants.
- (B) Estimates of offset credits as required under [326 IAC 2-3](#), for sources to be constructed in nonattainment areas.
- (C) Monitoring, testing, reporting, and record keeping requirements.
- (D) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgment that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. The signature shall:

- (A) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (B) subject the applicant to liability under state laws forbidding false or misleading statements.

(d) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

- (1) do not contain adequate information for the commissioner to process the application; or
- (2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within thirty (30) calendar days of receipt of the notice of deficiency. If the additional information is not submitted within thirty (30) calendar days, or the additional time provided by the commissioner, the application may be denied in accordance with [IC 13-15-4-9](#).

(e) Permits issued under this ~~article~~ **rule** shall contain the following:

(1) Emission limitations for any source or emissions unit that assure:

- (A) the ambient air quality standards set forth in [326 IAC 1-3](#) will be attained or maintained, or both;
- (B) the applicable prevention of significant deterioration maximum allowable increases set forth in [326 IAC 2-2](#) will be maintained;
- (C) the public health will be protected; and
- (D) compliance with the requirements of this title and the requirements of the CAA will be maintained.

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. The requirements shall be in accordance with [326 IAC 3](#) and other applicable regulations.

(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under [326 IAC 2-6.1-6](#), [326 IAC 2-7-12](#), or [326 IAC 2-8-11.1](#).

(4) The following requirements with respect to compliance:

(A) The commissioner may require stack testing, monitoring, or reporting at any time to assure compliance with all applicable requirements. Any monitoring or testing shall be performed in accordance with [326 IAC 3](#) or other methods approved by the commissioner.

(B) Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following:

(i) Enter upon the premises where:

(AA) a permitted source is located or emissions related activity is conducted; or

(BB) records required by a permit term or condition are kept.

(ii) Have access to and copy any records that must be kept under this title or the conditions of a permit or permit revision.

(iii) Inspect any:

(AA) operations;

(BB) processes;

(CC) emissions units (including monitoring and air pollution control equipment); or

(DD) practices;

regulated or required under a permit or permit revision.

(iv) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement, as authorized by the CAA and this title.

(v) Document alleged violations using cameras or video equipment. The documentation may be subject to a claim of confidentiality under [326 IAC 17.1](#).

(5) For sources that will operate pursuant to an operating permit under [326 IAC 2-6.1](#), a requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit. The commissioner may request that the source provide an identification of all emissions units that have been installed that are described under [326 IAC 2-1.1-3\(d\)\(1\)](#) through [326 IAC 2-1.1-3\(d\)\(31\)](#) with the annual notification.

(f) Any permit issued under this section shall conform to the permit content requirements under subsection (e), except for the following:

(1) Any permit that includes limitations on the potential to emit of a source must conform with the federally enforceable state operating permit (FESOP) permit content and compliance requirements under [326 IAC 2-8-4](#) and [326 IAC 2-8-5](#).

(2) An applicant may request that the permit content and compliance requirements conform with the Part 70 requirements under [326 IAC 2-7-5](#) and [326 IAC 2-7-6](#) if the applicant is also requesting that the Part 70 permit issuance requirements under [326 IAC 2-7](#) apply.

(g) The commissioner shall provide for public notice and comment in accordance with [326 IAC 2-1.1-6](#) prior to issuing a construction permit.

(h) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(1) The affidavit shall include the following:

(A) The name and title of the authorized individual.

(B) The company name.

(C) An affirmation that the source was constructed in conformance with the requirements and intent of the construction permit application.

(D) Identification of any changes to the source not included in the construction permit application or any amendment thereof.

(E) The signature of the authorized individual.

(2) The affidavit shall be notarized.

(3) A source shall submit the affidavit to the commissioner after construction has been completed.

- (i) A source may not operate any air pollutant emitting source or emissions unit prior to receiving a validation letter issued by the commissioner, except as provided in the following:
- (1) A source may operate upon submission of an affidavit of construction that affirms that the source is described by, and will comply with, the construction permit as issued or previously amended.
  - (2) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.
  - (3) The validation letter may authorize the operation of all or part of the source.
  - (4) The validation letter may include amendments to the permit if the amendments are requested by the source and if the amendment does not constitute a revision and require public notice and comment under [326 IAC 2-1.1-6](#).
  - (5) A validation letter may not approve the operation of any emissions unit if an amendment requested by the source would constitute a revision and require public notice and comment under [326 IAC 2-1.1-6](#).

\*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, **Legal Counsel**, Indiana Government Center North, ~~Tenth~~ **Thirteenth** Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 2-5.1-3](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1009; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3059; filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))

SECTION 3. [326 IAC 2-6.1-5](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 2-6.1-5](#) Operating permit content**

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

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) Permits or permit revisions issued under this rule shall contain the following:

- (1) Emission limitations for any source or emissions unit that assure
  - ~~(A) the ambient air quality standards set forth in [326 IAC 1-3](#) will be attained or maintained, or both;~~
  - ~~(B) the applicable prevention of significant deterioration maximum allowable increases set forth in [326 IAC 2-2](#) will be maintained;~~
  - ~~(C) the public health will be protected; and~~
  - ~~(D) compliance with the requirements of this title and the requirements of the CAA will be maintained.~~
- (2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with [326 IAC 3](#) and other applicable regulations.
- (3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under section 6 of this rule and the procedures under this rule.
- (4) A requirement that upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following at a reasonable time of day and in accordance with safety requirements:
  - (A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records required by a permit term or condition are kept.
  - (B) Have access to and copy any records that must be kept under this title or the conditions of a permit or operating permit revision.
  - (C) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment), or practices regulated or required under a permit or operating permit revision.
  - (D) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement as authorized by the CAA and this title.
  - (E) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under [326 IAC 17.1](#).
- (5) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit or registration. The commissioner may request that the source

provide an identification of all emission units that have been installed that are described under [326 IAC 2-1.1-3\(e\)\(1\)](#) through [326 IAC 2-1.1-3\(e\)\(31\)](#) with the annual notification.

(b) An operating permit issued under this rule may include terms and conditions that, notwithstanding the permit modification or revision requirements under section 6 of this rule, allow the source to make modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

- (1) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.
- (2) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(c) The commissioner shall not issue a minor source operating permit that includes terms and conditions that limit the potential to emit of the source to below emission thresholds for a Part 70 permit.

*(Air Pollution Control Division; [326 IAC 2-6.1-5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1016; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 796; errata filed Jul 23, 2007, 4:19 p.m.: [20070815-IR-326070466ACA](#); readopted filed Aug 25, 2010, 2:42 p.m.: [20100922-IR-326100394BFA](#))*

#### [Notice of Public Hearing](#)

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