

SECOND NOTICE OF COMMENT PERIOD

LSA Document #16-332

OUTDOOR HYDRONIC HEATER REVISIONS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 4-3](#) concerning air emissions from outdoor hydronic heaters. 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 17, 2016, Indiana Register (DIN: [20160817-IR-326160332FNA](#)).

CITATIONS AFFECTED: [326 IAC 4-3](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Outdoor hydronic heaters are used to heat and provide hot water for homes and other structures. They are freestanding appliances that burn wood or some other fuel to heat water and are available in a wide variety of sizes and efficiencies. A unit typically looks like a small shed with a short smoke stack and is usually located in close proximity to the building to be heated. The basic design of outdoor hydronic heaters, as well as improper operation of the heaters, can cause fuel to burn incompletely, or smolder, which can result in thick smoke and high particulate emissions. Pollutants in the emissions from outdoor hydronic heaters include particulate matter, carbon dioxide, and volatile organic compounds (VOCs), including formaldehyde, benzene, polycyclic organic matter, aromatic hydrocarbons, and a number of trace elements.

On March 16, 2015, the United States Environmental Protection Agency (U.S. EPA) published a New Source Performance Standard (NSPS) in the Federal Register (80 FR 13672) to regulate outdoor hydronic heaters titled Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces (codified at 40 CFR 60, Subpart QQQQ). This rule was effective on May 15, 2015, and applies to manufacturers and retailers of outdoor hydronic heaters. Upon the effective date of the federal rule, all new outdoor hydronic heaters were required to meet particulate matter emission limits. All requirements of the federal NSPS have been adopted into state rule in Article 12 ([326 IAC 12](#)).

The NSPS at 40 CFR 60, Subpart QQQQ, regulates particulate matter in a two-step compliance approach, including test methods and a certification process that manufacturers and retailers of the units are required to follow. The two-step compliance approach requires a transition from step 1 emission limits on the effective date of the rule, to step 2 emission limits five years later. The NSPS allows manufacturers lead time to develop, test, field evaluate, and certify current technologies across their consumer product lines to meet step 2 emission limits and allow retailers to sell existing inventory.

Indiana's current outdoor hydronic heater rule at [326 IAC 4-3](#), effective May 18, 2011, relied on U.S. EPA's voluntary program to qualify and label new installations. At the time of the state rulemaking, U.S. EPA did not regulate outdoor hydronic heaters, but recognized the health hazards posed by use of the devices. The existing state rule includes operational requirements to prohibit the burning of materials other than clean wood or other approved renewable fuels in the units, stack height requirements, and a summer operating ban if the unit is located close to an occupied building that is not located on the same property as the unit. It also requires new units to meet a particulate emission limit of 0.32 pounds per million British thermal units (lbs/mmBtu), referred to as Phase 2 requirements. Upon publication of the NSPS in 2015, installations of outdoor hydronic heaters previously regulated under the state rule became subject to the requirements of the NSPS at 40 CFR 60, Subpart QQQQ. The state rule will continue to only include outdoor hydronic heaters designed for a thermal output of three hundred fifty thousand (350,000) lbs/mmBtu per hour or more.

The purpose of this rulemaking is to amend Indiana's current outdoor hydronic heater rule at [326 IAC 4-3](#) to incorporate the requirements of the NSPS at 40 CFR 60, Subpart QQQQ, for outdoor hydronic heaters. These amendments do not make any substantive changes or impose any new regulations or requirements for outdoor hydronic heater owners or operators beyond those currently in effect in the federal NSPS or in the state rule at [326 IAC 4-3](#). This rulemaking retains the requirements of the 2011 state rule concerning stack height requirements, the summertime operating ban, opacity limits, and the notice to buyers. This rulemaking also amends additional language as necessary to remove the homemade unit exemption, as all units manufactured are now regulated by the federal NSPS. The proposed revisions also make it clear that the exemptions for stack

height and summertime use apply not only to Phase 2 units under the voluntary program, but also units certified under the NSPS. While the NSPS applies to more than outdoor hydronic heaters, such as forced air furnaces, the state rule at [326 IAC 4-3](#) will remain limited to outdoor hydronic heaters.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft revisions to [326 IAC 4-3](#) imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This rule should have a minimal fiscal impact. New installations will be required to follow the NSPS and the revised state rule. New installations in Indiana were already required to meet Phase 2 emission limits that are equivalent to the 2015 NSPS limits. Any costs associated with the more stringent standards in 2020 under the NSPS are costs required by the federal rule and not under state law.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 17, 2016, through September 16, 2016, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the 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. Comments may be submitted in one of the following ways:

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

LSA Document #16-332 Outdoor Hydronic Heaters Revisions

Keelyn Walsh

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

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 Rules Development Branch at (317) 232-8922.

(3) By electronic mail to kwalsh@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 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, 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 not later than April 14, 2017. 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 Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 4-3-1](#) IS AMENDED TO READ AS FOLLOWS:

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

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 1. (a) Except as provided in subsection (b), this rule applies to any manufacturer, supplier, distributor, or person that:

- (1) distributes or sells;
- (2) markets;
- (3) installs;
- (4) operates; or
- (5) owns;

an outdoor hydronic heater in Indiana.

(b) Sections 3 and 6 of this rule do not apply to the following:

~~(1) An outdoor hydronic heater that:~~

~~(A) is or has been owned by a person for his or her own personal use; and~~

~~(B) is distributed or sold within three (3) years of the effective date of this rule to another for his or her own personal use.~~

~~For purposes of this subdivision, "personal use" means the use of an outdoor hydronic heater by an individual solely for residential space or domestic water heating, and not to service a commercial or institutional establishment.~~

~~(2) An outdoor hydronic heater available for sale in an Indiana dealer's inventory before the effective date of this rule.~~

~~(3) Homemade units.~~

(4) an outdoor hydronic heater where the manufacturer has demonstrated that the unit is designed for a thermal output of three hundred fifty thousand (350,000) British thermal units per hour (Btu/hr) or more.

(Air Pollution Control Division; [326 IAC 4-3-1](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

SECTION 2. [326 IAC 4-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 4-3-2](#) Definitions

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 2. The following definitions apply throughout this rule:

(1) "Clean wood" means untreated wood that has no paint, stains, coatings, glues, or any chemical treatment.

(2) "Distribute or sell" means to:

- (A) distribute;
- (B) sell;
- (C) advertise for sale;
- (D) offer for sale;
- (E) lease;
- (F) ship;
- (G) deliver for shipment;
- (H) release for shipment; or
- (I) receive and deliver, or offer to deliver.

The term does not include the distribution or sale by a manufacturer of an outdoor hydronic heater that is installed outside of Indiana.

~~(3) "Homemade unit" means an outdoor hydronic heater built by a person for the builder's personal use. The term does not include installation kits.~~

~~(4) "Manufacturer" means any person who constructs or imports into the United States an outdoor hydronic heater.~~

~~(5) (3) "Outdoor hydronic heater" means a fuel burning device:~~

- (A) designed to burn wood or other approved renewable solid fuels;
- (B) ~~that~~ is intended for outdoor installation or installation in structures not normally occupied by humans; and
- (C) that heats building space or water, or both, by the distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture.

~~(6) (4) "Start-up period" means the time period beginning with flame stability after first charge of wood fuel and lasts no longer than two (2) hours. The term includes only initial start-up where no previous wood coal bed exists and does not include refueling.~~

(Air Pollution Control Division; [326 IAC 4-3-2](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

SECTION 3. [326 IAC 4-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 4-3-3](#) Emission limit for outdoor hydronic heaters installed after the effective date of this rule

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 3. ~~After the effective date of this rule,~~ Except as provided in section 1(b) of this rule, ~~no~~ a person shall **not** distribute or sell or install an outdoor hydronic heater unless

- ~~(1) it has been qualified through U.S. EPA's voluntary outdoor hydronic heater program to meet the Phase 2 particulate matter emission limit of thirty two hundredths (0.32) pounds per million British thermal units (lb/MMBtu) heat output, with no individual test run exceeding eighteen (18) grams per hour; and~~
- ~~(2) a U.S. EPA white tag is affixed to the unit in a readily visible or accessible location. The white tag signifies that the unit meets the Phase 2 emission limit for U.S. EPA's voluntary outdoor hydronic heater program. it has been certified to meet the emission limits for hydronic heaters in the New Source Performance Standard at 40 CFR 60, Subpart QQQQ, as incorporated by reference at [326 IAC 12*](#).~~

*Copies of this document may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 4-3-3](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

SECTION 4. [326 IAC 4-3-4](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 4-3-4](#) General requirements for existing outdoor hydronic heaters

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 4. (a) ~~After November 30, 2014~~ All outdoor hydronic heaters that have not been ~~qualified to meet the Phase 2 emission limit in section 3 of this rule~~ **certified to meet the emission limits in 40 CFR 60, Subpart QQQQ**, must have a permanent stack extending five (5) feet higher than the peak of the roof of any occupied building:

- (1) located within one hundred fifty (150) feet of the unit; and
- (2) not located on the same property on which the heater is installed.

(b) The maximum stack height required under this rule is twenty-two (22) feet above the ground.

(Air Pollution Control Division; [326 IAC 4-3-4](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

SECTION 5. [326 IAC 4-3-5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 4-3-5](#) Operating standards

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 5. (a) ~~No~~ **A** person shall **not** operate an outdoor hydronic heater from May 1 through September 30 if the unit is located less than three hundred (300) feet away from an occupied building not located on the same property on which the heater is installed, unless the outdoor hydronic heater has been ~~qualified to meet the Phase 2 emission limit in section 3 of this rule.~~ **certified to meet the emission limits in 40 CFR 60, Subpart QQQQ.**

(b) A person shall burn only clean wood or other approved renewable solid fuel in an outdoor hydronic heater.

(c) ~~No~~ **A** person shall **not** burn any of the following items in an outdoor hydronic heater:

- (1) Any wood that does not meet the definition of clean wood.
- (2) Garbage.
- (3) Tires.
- (4) Lawn clippings or yard waste.
- (5) Materials containing plastic.
- (6) Materials containing rubber.
- (7) Waste petroleum products.
- (8) Paints and paint thinners.
- (9) Chemicals.
- (10) Coal.
- (11) Glossy or colored papers.
- (12) Construction and demolition debris.
- (13) Plywood.
- (14) Particleboard.
- (15) Manure.
- (16) Animal remains.
- (17) Asphalt products.

(d) Home heating oil, natural gas, or other fuels recommended by the manufacturer may be used as a starter or supplemental fuel for dual-fired outdoor hydronic heaters.

(e) ~~No~~ **A** person shall **not** cause or allow the emission of a smoke plume from an outdoor hydronic heater to exceed an average of twenty percent (20%) opacity, a measure of the amount of light obscured by particulate pollution, for six (6) consecutive minutes in any one (1) hour period. Upon initial firing of the unit where no wood coal bed exists, visible emissions may not exceed forty percent (40%) opacity for twenty (20) consecutive minutes during the start-up period. Measurements of opacity ~~shall~~ **must** be conducted in accordance with 40 CFR 60, Appendix A, Method 9*, by a representative of the commissioner.

(f) Outdoor hydronic heaters must comply with all applicable:

- (1) state and federal laws; and
- (2) local ordinances.

*This document is incorporated by reference. ~~and is available~~ **Copies may be obtained** from the Government Printing Publishing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 www.gpo.gov, or is ~~are~~ available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, **Legal Counsel**, Indiana Government Center North, ~~Fifth Floor~~, 100 North Senate Avenue, **Thirteenth Floor**, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 4-3-5](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

SECTION 6. [326 IAC 4-3-6](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 4-3-6](#) Notice to buyers

Authority: [IC 13-14-8-7](#); [IC 13-17-1-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-17-1-3](#); [IC 13-17-3](#)

Sec. 6. (a) After the effective date of this rule, ~~no~~ **a** person shall **not** distribute, or sell, or install any outdoor hydronic heater unless the seller or dealer provides the buyer or lessee with a copy of this rule.

(b) The buyer or lessee ~~shall~~ **must** sign a notice at the time of purchase or lease that includes the following:

- (1) A statement acknowledging receipt of the rule, as follows: "I, (buyer or lessee's name), have been provided a copy of [326 IAC 4-3](#) (Outdoor Hydronic Heater ~~Indiana Air Pollution Control Board~~ rule) from (seller or dealer's name) at the time of my purchase or lease."
- (2) The name, address, and telephone number of both the seller or dealer and the buyer or lessee.
- (3) The address of the location where the outdoor hydronic heater will be installed.
- (4) The make and model of the outdoor hydronic heater.

(c) Within seven (7) days of making delivery of the outdoor hydronic heater into the possession of the buyer or lessee, the seller or dealer ~~shall~~ **must** mail or otherwise provide a copy of the signed notice to the department.

(Air Pollution Control Division; [326 IAC 4-3-6](#); filed Apr 18, 2011, 11:27 a.m.: [20110518-IR-326050332FRA](#))

[Notice of Public Hearing](#)

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