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## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #03-70(APCB)**

## **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF LAKE COUNTY FOR PM<sub>10</sub>**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments concerning the redesignation of Lake County to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM<sub>10</sub>) and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

**CITATIONS AFFECTED:** 326 IAC 1-4-1.

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

### **STATUTORY REQUIREMENTS**

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

### **BACKGROUND**

On November 6, 1991, EPA published a nonattainment designation for northern Lake County for the PM<sub>10</sub> standards. These standards include annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. During the 1990's, significant reductions in PM<sub>10</sub>

emissions were achieved in Lake County due to the adoption of PM<sub>10</sub> control rules and efforts by Lake County industry. Air quality improved, as measured by IDEM's ambient air quality monitors. As a result, on September 25, 2002, Indiana requested that the PM<sub>10</sub> designation for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request, including a public hearing held July 18, 2002, and a discussion of how the various criteria for redesignation have been met.

EPA published approval of Indiana's request to redesignate Lake County to attainment for PM<sub>10</sub> in the Federal Register on January 10, 2003 (68 FR 1370). This action was effective March 11, 2003. U.S. EPA's action was based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act section 107(d)(3)(E). EPA concluded that these criteria have been met with respect to PM<sub>10</sub> in Lake County. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under section 110(k) of the Clean Air Act.
3. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under section 110 and part D of the Clean Air Act.

At this time, IDEM is proposing to make changes to Indiana's rules for consistency with the redesignation of Lake County to attainment for PM<sub>10</sub>. U.S. EPA approved the maintenance plan for Lake County, which includes maintaining existing programs and air monitoring. The maintenance plan requires that certain rules specific to Lake County remain in effect.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule. In addition, IDEM conducted a public hearing on July 18, 2002 in Gary, Indiana, as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation. U.S. EPA conducted a public process as well when it approved Indiana's redesignation request.

This rulemaking incorporates into state rules 68 FR 1370 (January 10, 2003), the final approval for redesignating Lake County to attainment for the PM<sub>10</sub> standards. Until the state rulemaking is effective, Lake County will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for Lake County continue to apply to the redesignated area.

## **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on the redesignation of Lake County to attainment for PM<sub>10</sub> as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt the redesignation of Lake County for PM<sub>10</sub> as established by the United States Environmental Protection Agency.
- (3) The public will benefit from prompt adoption of this rule, because it provides consistency with the federal rule that redesignates Lake County to attainment for PM<sub>10</sub>.
- (4) There have already been two public processes, one at the state level and one at the federal level, on the policy issue that is the subject of this rulemaking.
- (5) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (6) The draft rule is hereby incorporated into these findings.

Lori Kaplan

Commissioner

Indiana Department of Environmental Management

## **ADDITIONAL INFORMATION**

Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

## **DRAFT RULE**

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 26 IR 1077, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

### **326 IAC 1-4-1 Designations**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 1. The air pollution control board incorporates by reference:

(1) 40 CFR 81.315\*; ~~and~~

(2) 66 FR 53665 (October 23, 2001)\*; ~~and~~

(3) **68 FR 1370 (January 10, 2003)\*;**

concerning attainment status designations.

\*These documents are 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 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077*)

### ***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on May 7, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-4-1.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317) 233-0855. (TDD): (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana and are open for public inspection.*