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

### **FIRST NOTICE OF COMMENT PERIOD**

#03-201(APCB)

## **DEVELOPMENT OF AMENDMENTS TO RULES 326 IAC 2-10 AND 326 IAC 2-11 CONCERNING PERMIT BY RULE FOR SPECIFIC SOURCE CATEGORIES**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 326 IAC 2-10 concerning permit by rule and 326 IAC 2-11 concerning permit by rule for specific source categories. These rules were noticed for readoption in the initial sunset rulemaking (LSA Document #00-44); a request was made that these rules go through the regular, IC 13-14-9, rulemaking process. IDEM seeks comments on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking

**CITATIONS AFFECTED:** 326 IAC 2-10; 326 IAC 2-11.

**AUTHORITY:** IC 13-14-9; IC 13-14-9.5.

### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

#### **Basic Purpose and Background**

In 1996 the Indiana legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 326 IAC 2-10, permit by rule and 326 IAC 2-11, permit by rule, for specific source categories, are subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13 a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. 325 IAC 2-10 and 326 IAC 2-11 were first noticed for readoption in the first sunset rulemaking (LSA Document #00-44). Because a request and a basis for the request was submitted during the first comment period for both rules, 326 IAC 2-10 and 326 IAC 2-11 were not readopted in the first sunset rulemaking and must now go through the IC 13-14-9 rulemaking process.

326 IAC 2-10 applies to sources that limit their actual emissions below major source levels and do not have a control device as an integral part of their process. A source that meets the requirements of the rule possesses a permit under the rule. 326 IAC 2-10, sections 1 through 6, was adopted in 1996; section 1 of that rule was amended in 1998 and will expire on January 1, 2006. Sections 2 through 6 will expire on January 1, 2004.

326 IAC 2-11 applies to gasoline dispensing operations, grain elevators, and sources that process or mill grain and limit their allowable emissions or "potential to emit" by complying with specified conditions. A source that complies with the requirements of this rule possesses a permit under the rule. Sections 1 through 4 were adopted in 1997; section 1 of this rule was amended in 1998 and will expire January 1, 2006. Section 2 through 4 will expire on January 1, 2005.

The number of sources that are covered by these two rules is not known since the rules provide that as long as a source can demonstrate compliance with the requirements of the rule upon request, it is covered by the applicable permit by rule and is not required to possess a permit issued by the department. This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-10 and 326 IAC 2-11.

#### **Alternatives To Be Considered Within the Rulemaking**

Alternative 1. Let 326 IAC 2-10 and 326 IAC 2-11 expire. Under this alternative, sources that are now covered by the permit by rule will be required to possess a permit issued under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC

2-9, Source Specific Operating Agreements. Although there are no fees associated with 326 IAC 2-10 or 326 IAC 2-11, there are fees associated with each of the other types of permits.

Alternative 2. Amend 326 IAC 2-10 and 326 IAC 2-11. This alternative was requested by a commentator who suggested that the department should make a number of revisions, including the following:

- (1) Identify those portions of the rule that impose additional burdens beyond federal requirements.
- (2) Identify the practical problem, if any, that requires such additional burdens.
- (3) Clarify the rules to resolve numerous problems that permit writers have encountered in implementation.
- (4) Improve the consistency and flow of the requirements in distinguishing between major and minor sources.
- (5) Resolve problems associated with implementing Part 70 requirements at facilities that filed timely applications but have not yet received Part 70 permits.

Alternative 3. Readopt 326 IAC 2-10 and 326 IAC 2-11 as currently written. These rules were developed to minimize the burdens for sources potentially subject to Part 70 that did not have a control device as an integral part of their process and that could limit their "potential to emit". The rules, as written, allow sources to use the permit by rule function to avoid formal permitting and fees.

#### **Applicable Federal Law**

There is no applicable federal law requiring 326 IAC 2-10 and 326 IAC 2-11. However, these two rules were developed to minimize the regulatory burden and cost for both the regulated community and the department by implementing the permit requirements of Title V of the Clean Air Act Amendments of 1990 that resulted in development of the Part 70 Permit Program.

In the absence of 326 IAC 2-10 and 326 IAC 2-11, sources now permitted under these rules will be subject to one of the federally approved permit programs or state permit programs and will be required to obtain the applicable permit and pay the associated fees.

#### **Potential Fiscal Impact**

If either 326 IAC 2-10 or 326 IAC 2-11, or both, expire, as stated in Alternative 1, sources that are now covered by 326 IAC 2-10 or 326 IAC 2-11 will need a permit under 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each type of permit.

If either rule expires, the department or local permitting agencies will receive permit applications. Additional state or local resources will be required to write and issue the necessary permits.

If the rules expire, there should be no direct economic effect on citizens.

If the rules are amended, as stated in Alternative 2, the potential fiscal impact is not known. Upon review of the suggestions, a fiscal impact could not be developed due to the scope of the request.

If the rules are readopted, as stated in Alternative 3, there will be no fiscal impact to the sources, the department, or citizens.

#### **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 necessary, please contact Pat Troth, Rules Section, Office of Air Quality at (317) 233-5681 or (800) 451-6021 (in Indiana) extension 3-5681.

### **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:

#03-201(APCB) [326 IAC 2-10; 326 IAC 2-11]

Pat Troth

c/o Rules Section Administrative Assistant  
Rules Section  
Office of Air Quality  
Indiana Department of Environmental Management  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by September 1, 2003.

Additional information regarding this action may be obtained from Pat Troth, Rules Section, Office of Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).

Janet G. McCabe  
Assistant Commissioner  
Office of Air Quality