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

### **Proposed Rule** LSA Document #03-333

#### **DIGEST**

Amends 326 IAC 2-11-2 and readopts 326 IAC 2-11-1, 326 IAC 2-11-3, and 326 IAC 2-11-4 to allow gasoline dispensing operations, grain elevators, and sources that process mill or grain to operate under a permit by rule. *NOTE: IC 4-22-2.5-5 authorizes the governor, by executive order, to postpone the expiration of rules for one year. Executive Order #03-53, issued December 30, 2003, and printed at 27 IR 1663, postpones the expiration of the rules in this document until January 1, 2005. Effective 30 days after filing with the secretary of state.*

#### **HISTORY**

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7, Second Notice of Comment Period and Notice of First Hearing: January 1, 2004, Indiana Register (27 IR 1311).

Date of First Hearing: March 3, 2004.

#### **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 twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on January 1, 2004 (27 IR 1311), 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**

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2004, through January 30, 2004, on IDEM's draft rule language. No comments were received during the second comment period.

#### **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On March 3, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the readoption of 326 IAC 2-11-1, 326 IAC 2-11-3, and 326 IAC 2-11-4 and the development of amendments to 326 IAC 2-11-2. No comments were made at the first hearing.

**326 IAC 2-11-1**

**326 IAC 2-11-3**

**326 IAC 2-11-2**

**326 IAC 2-11-4**

SECTION 1. 326 IAC 2-11-1 IS READOPTED TO READ AS FOLLOWS:

#### **326 IAC 2-11-1 General provisions**

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

**Affected:** IC 13-11-2; IC 13-15; IC 13-17; IC 13-30-3

Sec. 1. (a) This section contains general provisions applicable to all other sections in this rule.

(b) Definitions provided in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this rule.

(c) A source may limit its allowable emissions or potential to emit by complying with the conditions of the applicable section of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1 unless otherwise required by law. A source complying with this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the rule limits the source's allowable emissions or potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7.

(d) A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable.

(e) Before a source subject to this rule modifies its facility or operations in such a way that it will no longer comply with this rule, it shall obtain the appropriate approval from the commissioner under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-7, or 326 IAC 2-8.

(f) Not later than thirty (30) days after receipt of a written request by the department or the U.S. EPA, the owner or operator of a source subject to this rule shall demonstrate that the source is in compliance with limits in the applicable section of this rule by providing throughput records for the previous twelve (12) months.

(g) A source electing to comply with this rule shall comply with the following:

- (1) The source shall operate and properly maintain air pollution control devices at the source.
- (2) The source shall follow generally accepted industry work practices to minimize emissions of regulated air pollutants.
- (3) The source shall not discharge air pollutants so as to create a public nuisance.

(h) This section does not affect a requirement to comply with the provisions of any other applicable federal, state, or local requirement, except as specifically provided in this title.

(i) A source subject to this rule may be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

- (1) at any time the source is not in compliance with the conditions provided in an applicable section of this rule; or
- (2) the source does not timely or adequately demonstrate compliance with the conditions in an applicable section of this rule.

(j) Any violation of this rule may result in administrative or judicial enforcement proceedings and penalties under IC 13-30-3. (*Air Pollution Control Board; 326 IAC 2-11-1; filed May 7, 1997, 4:00 p.m.: 20 IR 2316; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108*)

SECTION 2. 326 IAC 2-11-2 IS AMENDED TO READ AS FOLLOWS:

### **326 IAC 2-11-2 Gasoline dispensing operations**

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

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

Sec. 2. (a) This section applies to retail or commercial gasoline dispensing operations that: ~~meet each of the following conditions:~~

- (1) meet the conditions specified in subsection (b); **and**
- (2) demonstrate compliance as specified in subsection (c).

(b) To limit potential to emit as provided in section 1(c) of this rule, the following conditions are applicable to sources depending on their location:

(1) For sources located in Clark or Floyd County, the source:

- (A) fills its storage tanks by vapor-balanced fill;
- (B) has a Stage II vapor recovery system; and
- (C) dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline during an average month based on the last twelve (12) months.

(2) For sources located in Lake or Porter County, the source:

- (A) fills its storage tanks by vapor-balanced fill;
- (B) has a Stage II vapor recovery system; and
- (C) dispenses less than one million three hundred forty-four thousand (1,344,000) gallons of gasoline during an average month based on the last twelve (12) months.

(3) For all other sources, the source **uses:**

- (A) ~~uses~~ the splash method for filling storage tanks and dispenses less than six hundred eighty-eight thousand (688,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~
- (B) ~~uses~~ the submerged fill method for filling storage tanks and dispenses less than eight hundred thirty-three thousand (833,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~

(C) ~~uses~~ the vapor-balanced fill method for filling storage tanks and dispenses less than one million two hundred eighty-two thousand (1,282,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~ or  
(D) ~~uses~~ the fill vapor-balanced fill method for filling storage tanks, has a Stage II vapor recovery system, and dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline;  
during an average month based on the last twelve (12) months.

(c) Sources electing to comply with this rule must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or the U.S. EPA as follows:

- (1) The owner or operator of a gasoline dispensing source shall demonstrate compliance with subsection (b)(3)(A), (b)(3)(B), or (b)(3)(C), as applicable.
- (2) The owner or operator of a gasoline dispensing source subject to subsection (b)(3)(D) shall demonstrate compliance with subsection (b)(3)(D) and ~~326 IAC 8-4-6 subsections (a) through (d); (f); and (j) through (m)~~ **326 IAC 8-4-6(a) through 326 IAC 8-4-6(d), 326 IAC 8-4-6(f), and 326 IAC 8-4-6(j) through 326 IAC 8-4-6(m).**
- (3) The owner or operator of a gasoline dispensing source subject to subsection (b)(1) or (b)(2) shall demonstrate compliance with subsection (b)(1) or (b)(2), as applicable, and 326 IAC 8-4-6.

*(Air Pollution Control Board; 326 IAC 2-11-2; filed May 7, 1997, 4:00 p.m.: 20 IR 2316)*

SECTION 3. 326 IAC 2-11-3 IS READOPTED TO READ AS FOLLOWS:

### **326 IAC 2-11-3 Grain elevators**

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

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

Sec. 3. (a) This section applies to a grain elevator that receives and ships grain as follows:

- (1) Grain receiving by truck or rail and grain shipping by truck or rail.
- (2) Grain receiving by truck or rail and grain shipping by barge.
- (3) Grain receiving by truck or rail and grain shipping by ship.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, annual total throughput limits shall be equal to or less than the following:

- (1) For truck or rail grain receiving and truck or rail grain shipping, eleven million two hundred thousand (11,200,000) bushels.
- (2) For truck or rail grain receiving and barge grain shipping, eight million (8,000,000) bushels.
- (3) For truck or rail grain receiving and ship grain shipping, five million six hundred eighty thousand (5,680,000) bushels.

*(Air Pollution Control Board; 326 IAC 2-11-3; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2107)*

SECTION 4. 326 IAC 2-11-4 IS READOPTED TO READ AS FOLLOWS:

### **326 IAC 2-11-4 Grain processing or milling**

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

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

Sec. 4. (a) This section applies to sources that process or mill grain, including the following:

- (1) Flour mills.
- (2) Dry corn mills.
- (3) Animal feed mills.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, the annual total throughput limits shall be equal to or less than the following:

- (1) For flour mills, one hundred fifty-four thousand five hundred twenty-six (154,526) bushels.
- (2) For dry corn mills, one million sixty-three thousand two hundred fifty (1,063,250) bushels.
- (3) For animal feed mills, eleven million two hundred thousand (11,200,000) bushels.

*(Air Pollution Control Board; 326 IAC 2-11-4; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2108)*

### ***Notice of Public Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on May 5, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on the proposed readoption of 326 IAC 2-11-1, 326 IAC 2-11-3, and 326 IAC 2-11-4 and amendments to 326 IAC 2-11-2.*

*The purpose of this hearing is to receive comments from the public prior to final 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 readoptions and 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 Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 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) 232-6565. 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 Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Janet G. McCabe  
Assistant Commissioner  
Office of Air Quality