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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 #05-79(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING INCORPORATION BY REFERENCE OF DELISTED HAZARDOUS AIR POLLUTANTS AND COMPOUNDS EXCLUDED AS VOLATILE ORGANIC COMPOUNDS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90 for the purpose of incorporating by reference federal exclusions of volatile organic compounds (VOCs) and federally delisted hazardous air pollutants (HAPs) from their current corresponding definitions. IDEM has scheduled a public hearing before the air pollution control board (APCB) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-2-33.5; 326 IAC 1-2-48; 326 IAC 1-2-90.

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

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 29, 2004, United States Environmental Protection Agency (U.S. EPA) determined that five (5) VOCs and one (1) HAP have adequate data justifying that excluding the VOCs in whole or part and delisting the HAP from their corresponding definitions for regulatory purposes will not result in adverse human health or environmental effects under reasonable conditions.

U.S. EPA defines VOCs for purposes of federal regulations related to attaining the National Ambient Air Quality Standards

(NAAQS) for ozone. VOC are defined to include volatile compounds of carbon with the exemption of compounds that have negligible reactivity for the formation of ozone. Negligibly reactive compounds are those compounds that, based on scientific studies, are found not to contribute appreciably to ozone formation. Recently, U.S. EPA (69 FR 69290) delisted four (4) VOCs completely: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃) (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); and methyl formate (HCOOCH₃). These VOCs are considered to be negligibly reactive by U.S. EPA.

A fifth VOC, t-butyl acetate (also known as tertiary butyl acetate or informally as TBAC or TBAC) will not be treated as a VOC for purposes of emissions limitations or content requirements, but will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements that apply to VOC.

U.S. EPA's current VOC exemption policy is to avoid placing an undue regulatory burden on the use of compounds that do not significantly contribute to the formation of harmful concentrations of ozone. Once a compound is exempted, emissions of the compound may increase significantly due to substitution and new uses of the compound. Because these potential increases are exempt from control, it is important that the compounds be negligibly reactive and not simply marginally less reactive than compounds that they may replace. If by exempting negligibly reactive compounds, U.S. EPA encourages the substitution of such compounds for highly reactive compounds, this is an added environmental benefit.

U.S. EPA (69 FR 69320) also amended the list of HAPs contained in Section 112(b)(1) of the Clean Air Act (CAA) to remove the compound ethylene glycol monobutyl ether (EGBE or 2-Butoxyethanol) from the group of glycol ethers. U.S. EPA determined that there was adequate data to support delisting the EGBE.

By incorporating these federal regulations that exclude and delist the above mentioned chemicals, this rulemaking helps to ensure that state rules are consistent with federal regulations. The draft rule has also been updated to directly incorporate by reference the corresponding federal citations and existing rule language that had paraphrased previous federal language is being removed.

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.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation of federal regulations that excludes or delist five (5) VOCs and one (1) HAP from state current definitions. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) The draft rule is the direct incorporation by reference of federal regulations 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) The public will benefit from prompt adoption of this rule, because companies are interested in using the excluded or delisted chemicals to substitute for chemicals more hazardous to the environment as soon as possible.
- (3) 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.
- (4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly

Commissioner

Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Gayl Killough, Rules Section, Office of Air Quality (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-2-33.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-33.5 "Hazardous air pollutant" or "HAP" defined

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

Affected: IC 13-12

Sec. 33.5. "Hazardous air pollutant" or "HAP" means any air pollutant listed pursuant to Section 112(b) of the Clean Air Act **and not delisted from that list or redefined under 40 CFR Part 63, Subpart C, as amended at 69 FR 69325, November 29, 2004***.

***This document is incorporated by reference. Copies referenced in this section 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 1-2-33.5; filed May 25, 1994, 11:00 a.m.: 17 IR 2238)**

SECTION 2. 326 IAC 1-2-48 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-48 “Nonphotochemically reactive hydrocarbons” or “negligibly photochemically reactive compounds” defined
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 48. (a) “Nonphotochemically reactive hydrocarbons” or “negligibly photochemically reactive compounds” refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) ~~in~~ **as follows:**

- (1) 40 CFR 51.100(s)(1)*, The air pollution control board incorporates by reference 40 CFR 51.100(s)(1)*: as amended at 69 FR 69298, November 29, 2004*.**
- (2) 40 CFR 51.100(s)(5)*, as added at 69 FR 69304, November 29, 2004*.**
- (3) 40 CFR 51.100(s)(2)*, as measured by 326 IAC 8-1-4 and approved by the commissioner; subject to conditions under 40 CFR 51.100(s)(3) through 40 CFR 51.100(s)(4)*.**

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

~~*This document is~~ ***These documents are** incorporated by reference. Copies referenced in this section 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 1-2-48; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)

SECTION 3. 326 IAC 1-2-90, AS AMENDED AT 28 IR 18, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-90 “Volatile organic compound” or “VOC” defined
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 90. (a) ~~“Volatile organic compound” or “VOC” means any compound of carbon excluding the following: has the meaning set forth in 40 CFR 51.100(s)* as amended at 69 FR 69298, November 29, 2004* and 69 FR 69304, November 29, 2004*.~~

- ~~(1) Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.~~
- ~~(2) Any organic compound which has been determined to have negligible photochemical reactivity listed in section 48 of this rule. VOC content shall be measured in accordance with 326 IAC 8-1-4.~~

(b) ~~For purposes of determining compliance with emission limits, volatile organic compounds will be measured by the test methods in this title or 40 CFR 60, Appendix A*, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified and such exclusion is approved by the commissioner.~~

(c) ~~As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the commissioner may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the commissioner, the amount of negligibly-reactive compounds in the source’s emissions.~~

(d) ~~For purposes of federal enforcement for a specific source, the U.S. EPA shall use the test methods specified in Indiana’s~~

approved state implementation plan; in a permit issued pursuant to a program approved or promulgated under:

- (1) Title V of the Clean Air Act;
- (2) 40 CFR 51, Subpart I*;
- (3) 40 CFR 51, Appendix S*;
- (4) 40 CFR 52*; or
- (5) 40 CFR 60*.

The U.S. EPA shall not be bound by any state determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the provisions listed in this subsection.

*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, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board*; 326 IAC 1-2-90; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2377; filed Sep 23, 1988, 11:59 a.m.: 12 IR 256; filed May 9, 1990, 5:00 p.m.: 13 IR 1847; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2828; filed Sep 5, 1995, 12:00 p.m.: 19 IR 30; filed Aug 26, 2004, 11:30 a.m.: 28 IR 18)

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 June 1, 2005, 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 amendments to 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90.

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 Gayl Killough, Rules Section, Office of Air Quality, (317) 233-8628 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

Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 233-6565 (TDD). 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.