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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 LSA Document #06-19(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE DEFINITION OF HAZARDOUS AIR POLLUTANTS.

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to amend 326 IAC 1-2-33.5 for the purpose of incorporating by reference the federal delisting of methyl ethyl ketone from the definition of “hazardous air pollutant” or “HAP” and has scheduled a public hearing before the air pollution control board for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-2-33.5.

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

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 forgo 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

Section 112 of the Clean Air Act (CAA) contains a mandate for the U.S. Environmental Protection Agency (U.S. EPA) to evaluate and control emissions of HAPs. The initial HAP list is composed of specific chemical compounds and compound classes to be used by U.S. EPA to identify source categories for which U.S. EPA will subsequently promulgate emissions standards.

Section 112(b)(2) of the CAA requires U.S. EPA to make periodic revisions to the initial HAP list set forth in 112(b)(1) of the CAA

and outlines criteria to be applied in deciding whether to add or delete particular substances. The general guidelines in determining the addition or deletion of substances from this list pertains to the effect that such a substance would have on human health or the environment.

On November 27, 1996, the American Chemistry Council's Ketones Panel submitted a petition to delete methyl ethyl ketone (MEK) from the hazardous air pollutants (HAPs) list in Section 112(b)(1) of the CAA. Following the receipt of the petition, U.S. EPA conducted a preliminary evaluation to determine whether the petition was complete according to U.S. EPA criteria.

U.S. EPA published a notice of receipt of a complete petition to delist MEK in the Federal Register on June 23, 1999 (64 FR 33453). Based on comprehensive review of the data provided in the petition and other sources, EPA made an initial determination that the statutory criterion for deletion of MEK from the HAP list had been met. U.S. EPA, therefore, granted the petition by the American Chemistry Council's Ketones Panel on May 30, 2003 (68 FR 32608). On December 19, 2005, U.S. EPA published a final rule (70 FR 75047) that amended the list of HAPs contained in Section 112(b)(1) of the CAA to delist MEK. This rulemaking will incorporate by reference the final federal rule at 70 FR 75059 to provide consistency between state and federal regulations.

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.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on delisting MEK on the HAP list 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) 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 Pat Brady, Rules Development Section, Office of Air Quality (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-2-33.5, AS AMENDED AT 29 IR 795, SECTION 1, 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 13-17-3-4

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:

(1) as amended at 69 FR 69325, November 29, 2004*; **and**

(2) as amended at 70 FR 75059, December 19, 2005*.

*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; filed Oct 20, 2005, 1:30 p.m.: 29 IR 795*)

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 March 1, 2006, 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.

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 Patrick Brady, Rules Development 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) 232-6565 (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 East, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.