



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

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**Eric J. Holcomb**  
Governor

**Bruno L. Pigott**  
Commissioner

## **MEMORANDUM**

**TO:** Nancy King, General Counsel, Office of Legal Counsel

**FROM:** Kyle Burns, Attorney, Office of Legal Counsel

**DATE:** April 23, 2019

**RE:** Timeframes for Short Term Backup Units in LSA #16-309

Through its amendments to 326 IAC, IDEM proposed to except from the construction and modification permitting requirements the use of short term backup units (STBUs). This exception is not tied to the federal Clean Air Act or federal regulations. As an Indiana-specific exception, it does not protect sources operating STBUs from federal regulatory actions. IDEM does not anticipate its proposed amendments would raise concerns with EPA. STBUs must comply with 326 IAC 2-1.1-3(h)(4), which prevents sources from operating a STBU at a higher capacity than its permitted unit. The STBU exception addresses actual scenarios that arise when sources' emission units fail or malfunction and the sources need to continue operating. The proposed amendments solve this problem in a practical way without endangering human health or the environment.

Under the proposed amendments to 326 IAC 2-1.1-3, sources can operate STBUs for a limited amount of time. This memorandum briefly clarifies the basis for the timeframes for operation and removal of a STBU. IDEM is proposing to allow the use of STBUs when a permitted emission unit needs to be taken offline for repairs or maintenance. A STBU may not be on-site for more than 180 days, and it must be removed within 14 days from the completion of repairs or maintenance. *See* 326 IAC 2-1.1-3(h)(4), as amended by LSA #16-309, DIN 20190306-IR-326160309PRA.

IDEM established the proposed timelines based on its experience. In situations where sources have had to repair backup units, those repairs have generally been completed within 2-3 months. IDEM believes 180 days will provide the time needed for a source to repair its unit. This timeframe is not based on any other statutory or regulatory timeframe.

Similarly, the 14-day timeframe to remove a STBU is not rooted in statute or rule. Instead, IDEM intended to create a realistic timeframe for removing a STBU that would not be burdensome for the source. IDEM kept that timeframe as short as possible to prevent situations in which a source is running both the STBU and the permanent emissions unit. Running both units would be considered a violation of their permit requirements and could potentially cause the source to exceed emissions limits, putting source out of compliance and endangering human health and the environment.

While these timeframes should not pose problems for affected sources, IDEM recognizes these timeframes could create unforeseen issues. IDEM can use its enforcement discretion and opt not to take action against a source that, for good reason, exceeds the STBU timeframes. Also, IDEM is willing to amend the rule as needed, should it determine the timeframes do not meet the needs of the public or regulated community.

In short, IDEM's STBU exception to the construction and modification permitting requirements relies on the experience and expertise of the agency in setting timeframes for the use and removal of a STBU. IDEM believes these timeframes will provide appropriate flexibility for sources that need to use STBU and also prevent any increase in emissions during repairs to permanent emissions units.