

**TITLE 326 AIR POLLUTION CONTROL DIVISION**

**Proposed Rule**  
LSA Document #15-326

DIGEST

Amends [326 IAC 1-6-1](#), [326 IAC 1-6-2](#), [326 IAC 1-6-4](#), [326 IAC 1-6-5](#), [326 IAC 1-6-6](#), and [326 IAC 2-9-1](#) concerning startup, shutdown, and malfunction (SSM) emissions. Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: September 30, 2015, Indiana Register (DIN: [20150930-IR-326150326FNA](#)).  
Second Notice of Comment Period: March 30, 2016, Indiana Register (DIN: [20160330-IR-326150326SNA](#)).  
Notice of First Hearing: March 30, 2016, Indiana Register (DIN: [20160330-IR-326150326PHA](#)).  
Date of First Hearing: August 10, 2016.

**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 21 days long. Because this proposed rule is not substantively different from the draft rule published on March 30, 2016, at DIN: [20160330-IR-326150326SNA](#), 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**

IDEM requested public comment from March 30, 2016, through April 29, 2016, 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 August 10, 2016, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 1-6](#). No comments were made at the first hearing.

**[326 IAC 1-6-1](#); [326 IAC 1-6-2](#); [326 IAC 1-6-4](#); [326 IAC 1-6-5](#); [326 IAC 1-6-6](#); [326 IAC 2-9-1](#)**

SECTION 1. [326 IAC 1-6-1](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-6-1](#) Applicability**

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)  
**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 1. This rule applies to the owner or operator of any facility **source** required to obtain a permit under [326 IAC 2-5.1](#) or [326 IAC 2-6.1](#).

*(Air Pollution Control Division; [326 IAC 1-6-1](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; filed May 25, 1994, 11:00 a.m.: 17 IR 2238; filed Nov 25, 1998, 12:13 p.m.: 22 IR 980)*

SECTION 2. [326 IAC 1-6-2](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-6-2](#) Records; notice of malfunction**

**Authority:** [IC 13-14-8-2](#); [IC 13-17-3-4](#)  
**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 2. (a) **The owner or operator must keep** a record ~~shall be kept~~ of all malfunctions, including startups, or shutdowns of any facility **emission unit** or emission control equipment ~~which result~~ **that results** in violations of:

- (1) applicable air pollution control regulations; or
- (2) applicable emission limitations. ~~and such~~

(b) **The records shall must** be retained for a period of three (3) years and ~~shall~~ be made available to the commissioner upon request.

(c) When a malfunction of any facility **emission unit** or emission control equipment occurs ~~which that~~ lasts more than one (1) hour, ~~said the~~ condition ~~shall must~~ be reported to the commissioner or ~~his the~~ **commissioner's** appointed representative **as follows:**

(1) Notification ~~shall must~~ be made by telephone or telegraph, **other electronic means** as soon as practicable, but in no event later than four (4) daytime business hours after the beginning of ~~said the~~ occurrence.

(2) Failure to report a malfunction of any **emission unit** or emission control equipment subject to the requirements of this rule (~~326 IAC 1-6~~) shall constitute a violation of this rule (~~326 IAC 1-6~~) and any other applicable rules.

(3) Information ~~of on~~ the scope and expected duration of the malfunction ~~shall must~~ be provided including the following:

(4) (A) Identification of the specific emission control device to be taken out of service, ~~as well as and~~ the location and permit number of ~~such the~~ equipment.

(2) (B) The expected length of time that the emission control equipment will be out of service.

(3) (C) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period.

(4) (D) Any measures ~~such as the use of off-shift labor on equipment~~ that will be utilized **used** to minimize the length of the shutdown period, **such as the use of off-shift labor on equipment.**

(5) Any reasons that shutdown of the facility operation during the maintenance period would be impossible for the following reason:

(A) continued operation is required to provide essential services, provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be sufficient reason;

(B) continued operation is necessary to prevent injury to persons or severe damage to equipment.

(6) (E) A demonstration that interim control measures have reduced or will reduce emissions from the facility **emission unit** during the shutdown period.

(Air Pollution Control Division; [326 IAC 1-6-2](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; errata, 11 IR 2632)

SECTION 3. [326 IAC 1-6-4](#) IS AMENDED TO READ AS FOLLOWS:

### **326 IAC 1-6-4 Operating conditions**

**Authority:** [IC 13-14-8](#); [IC 13-17-3](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 4. (a) Facility **Source** owners or operators shall be responsible for operating **operate** and maintaining **maintain** all emission control equipment and combustion or process equipment or processes in compliance with all applicable rules. Emissions temporarily exceeding the standards which are due to malfunctions of facilities or emission control equipment shall not be considered a violation of the rules provided the source demonstrates that:

(1) All reasonable measures were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the allowable limits, including the use of off-shift and over-time labor, if necessary.

(2) All possible steps were taken to minimize the impact of the excessive emissions on ambient air quality which may include but not be limited to curtailment of operation and/or shutdown of the facility.

(3) Malfunctions have not exceeded five percent (5%), as a guideline, of the normal operational time of the facility.

(4) The malfunction is not due to the negligence of the operator.

(b) ~~No facility shall~~ **An emission unit must not** be operated unless ~~the any required~~ air pollution control **device or** devices and measures are also in operation simultaneously and are not bypassed. ~~unless necessary to prevent damage to equipment or injury to persons or unless there is a malfunction and the requirements set forth in subsection (a) of this section are met.~~

(c) Excessive emissions ~~shall must~~ be brought into compliance with all practicable speed, and appropriate ~~action, including those set forth above,~~ **actions must be taken to:**

(1) correct the conditions causing ~~such the~~ emissions to exceed applicable limits; ~~to~~

(2) reduce the frequency of occurrence of ~~such the~~ conditions; ~~to~~

(3) minimize the amount by which ~~said the~~ limits are exceeded; and ~~to~~

(4) reduce the length of time for which ~~said the~~ limits are exceeded.

These actions ~~shall must~~ be initiated as expeditiously as practicable.

(Air Pollution Control Division; [326 IAC 1-6-4](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 4. [326 IAC 1-6-5](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-6-5](#) Excessive malfunctions; department actions**

**Authority:** [IC 13-14-8](#); [IC 13-17-3](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 5. The commissioner may consider the following guidance in determining cases of excessive malfunctions: ~~where~~

(1) If records show that repeated malfunctions exceed five percent (5%) ~~as a guideline~~, of the normal operational time for any one (1) control device or combustion or process equipment, the commissioner may require that the maintenance program be improved or that the defective or faulty equipment or emission control device be replaced.

(2) The commissioner may require curtailment of operation of a ~~facility~~ **an emission unit** if the owner or operator of the ~~facility or~~ **emission unit and** emission control device cannot demonstrate that for the most recent twelve (12) month period the ~~facility and/or~~ **emission unit and** the emission control device ~~has~~ **have** operated in compliance with the applicable rules at least ninety-five percent (95%) of the operating time of ~~said~~ **the** equipment.

(Air Pollution Control Division; [326 IAC 1-6-5](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 5. [326 IAC 1-6-6](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 1-6-6](#) Malfunction emission reduction program**

**Authority:** [IC 13-14-8](#); [IC 13-17-3](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 6. (a) Any owner or operator of a ~~facility which has the potential to emit concentration in excess of the concentrations stated in~~ [326 IAC 1-6-1](#) **an emission unit that is required to obtain a permit under section 1 of this rule** shall submit by January 19, 1980, ~~or~~ **a malfunction emission reduction program** within one hundred eighty (180) days after a new source **emission unit** commences operation. ~~a malfunction emission reduction program. Said~~

(b) The program shall ~~must~~ include: ~~but not be limited to~~

(1) the normal operating emission rate; and

(2) the ~~program proposed~~ **actions that will be taken** to reduce emissions in the event of a malfunction to an emission rate ~~which~~ **that** will not contribute to the cause of the violation of the ambient air quality standards established in [326 IAC 1-3](#).

(c) The program shall ~~must~~ be based on the:

(1) best estimates of type and number of startups, shutdowns, and malfunctions experienced during normal operation of the ~~facility~~ **emission unit** or emission control device; and ~~the~~

(2) scope and duration of ~~such~~ **the** conditions. ~~Said~~

(d) The program ~~may be~~ **is** subject to review and approval by the commissioner.

(Air Pollution Control Division; [326 IAC 1-6-6](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2382)

SECTION 6. [326 IAC 2-9-1](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 2-9-1](#) General provisions**

**Authority:** [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-11-2](#); [IC 13-14-8](#)

Sec. 1. (a) The definitions in [IC 13-11-2](#), [326 IAC 1-2](#), [326 IAC 2-7](#), and [326 IAC 2-8](#) apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement under this rule is not subject to [326 IAC 2-6.1](#) unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to [326 IAC 2-5.1](#) or [326 IAC 2-7](#) provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for [326 IAC 2-5.1](#) or [326 IAC 2-7](#). Until the commissioner has issued an operating agreement for a source that would otherwise be subject to [326 IAC 2-5.1](#), [326 IAC 2-6.1](#), [326 IAC 2-7](#), or [326 IAC 2-8](#), the source is subject to all applicable requirements of those rules. 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](#), or [326 IAC 2-8](#).

(c) The owner or operator of a source seeking an operating agreement shall **must** submit a request to the commissioner. The request shall **must** include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

(1) Identifying information.

(2) A description of the following:

(A) The source's:

(i) nature;

(ii) location;

(iii) design capacity; and

(iv) typical operating schedule.

(B) The nature and amount of regulated pollutants emitted in the prior twelve (12) months.

(C) How the source will comply with the applicable restrictions and conditions specified in this rule.

(3) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request shall **must** be signed by a responsible official who shall ~~certify~~ **certifies** that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule shall **must** be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement shall **must**:

(1) specify the source specific restrictions and conditions applicable to the source; and

(2) establish specific monitoring and reporting requirements.

Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice shall **must** be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in ~~such~~ a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall obtain the appropriate approval from the commissioner under the following:

(1) [326 IAC 2-2](#).

(2) [326 IAC 2-3](#).

(3) [326 IAC 2-4.1](#).

(4) [326 IAC 2-5.1](#).

(5) [326 IAC 2-6.1](#).

(6) [326 IAC 2-7](#).

(7) [326 IAC 2-8](#).

(f) Any records required to be kept by a source in accordance with any section of this rule shall **must** be:

(1) maintained at the site for at least five (5) years; and

(2) made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may

combine up to four (4) types of source specific operating agreements in one (1) application. Upon billing, the applicant shall pay the applicable fee in accordance with [326 IAC 2-1.1-7\(g\)](#).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report ~~shall~~ **must** include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. ~~If an exceedance is the result of a malfunction, then the provisions of [326 IAC 1-6](#) apply.~~

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Revocation of the operating agreement and a source becoming subject to the applicable requirements of a major source may result from noncompliance with any:

- (1) applicable provision of this rule; or
- (2) requirement contained in a source's operating agreement.

*(Air Pollution Control Division; [326 IAC 2-9-1](#); filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1059; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 801; filed Sep 28, 2011, 10:56 a.m.: [20111026-IR-326070286FRA](#))*

#### [Notice of Public Hearing](#)

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