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

### **SECOND NOTICE OF COMMENT PERIOD #96-16(APCB)**

#### **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING FUGITIVE DUST**

##### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule, 326 IAC 6-4.5, concerning fugitive dust emissions. The new fugitive dust rule will replace the current rule, found at 326 IAC 6-4. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

##### **HISTORY**

First Notice of Comment Period: December 1, 1996, Indiana Register (20 IR 792).

Second Notice of Comment Period: March 1, 1997, Indiana Register (20 IR 1650).

**CITATIONS AFFECTED:** 326 IAC 6-4; 326 IAC 6-4.5.

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

##### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

This rulemaking was begun in 1996 to satisfy the requirements of HEA 1401, P.L. 123-1996, which called for IDEM to evaluate the appropriateness of the sixty (60) minute time period found in 326 IAC 6-4-2(3). This part of the existing fugitive dust rule involves determining compliance by measuring the dust upwind and downwind of the source. It is a violation of the existing rule if the average downwind ground level concentration of dust exceeds the upwind concentration by more than fifty (50) micrograms per cubic meter for a sixty (60) minute period. HEA 1401 also required IDEM to report the department's findings on the sixty (60) minute time period to the air pollution control board (board) and to initiate rulemaking to revise or reaffirm 326 IAC 6-4-2(3). IDEM evaluated the time period and recommended that it be retained, in combination with certain other proposed changes to the rule, at the November 1996 board meeting.

In March 1997, IDEM published a second notice of rulemaking that included draft rule language. The draft rule included the following changes to the rule currently in effect:

- (1) Required a source to provide a fugitive dust control plan if the department issues a finding of excessive fugitive dust; enforcement actions would be pursued for failure to submit a plan or comply with the plan or a department order.
- (2) Added definitions for "adequate dispersion," "excessive wind speed," "fugitive dust source," and "simultaneously."
- (3) Added secondary deposition analysis as a basis for the department to issue a finding of excessive fugitive dust.
- (4) Eliminated reference to particulate matter size.

IDEM received extensive comments concerning the draft rule language. IDEM has made a number of changes to the draft rule in response to those comments and believes it is appropriate to withdraw the Second Notice published on March 1, 1997, and replace it with this Second Notice of rulemaking and revised draft rule. Because IDEM is republishing the Second Notice and draft rule, IDEM is not responding formally, in this notice, to the comments on the 1997 Second Notice. However, IDEM will make available informal responses to the substance of the comments.

The revised draft rule in this rulemaking retains the provisions from the previous draft rule regarding secondary deposition analysis, elimination of particulate matter size, and use of dust control plans. This revised draft rule language specifies that the initial fugitive dust event is a violation of the rule and will result in a finding of excessive fugitive dust issued by the department and the requirement that the source submit a dust control plan. The definitions for "adequate dispersion," "simultaneously," and "fugitive dust source" or "source" have been deleted. A definition for "dust" has been added, and the definitions for "excessive wind speed" and "fugitive dust" have been revised. IDEM also proposes adding the use of the closest state, local, or industrial meteorological station that collects continuous Weather Service data, in order to determine wind speed.

IDEM would like to receive input on specific draft rule language for fugitive dust control, particularly on incentives or alternative

approaches for sources to mitigate chronic fugitive dust situations prior to necessitating enforcement measures.

IDEM believes that amending the rule as suggested in this Second Notice will result in positive environmental benefits and a more reasonable approach for industry. However, since the time that this rulemaking was initiated, in 1996, 326 IAC 6-4 has become subject to the sunset provisions of IC 13-4-9.5. The rule will, therefore, expire on January 1, 2002, unless new rule 326 IAC 6-4.5 is adopted or the existing rule is readopted prior to that time.

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from December 1, 1996, through December 31, 1996, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following party by the comment period deadline:

Inland Steel

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* IDEM should establish a twenty-four (24) hour averaging period as opposed to the current sixty (60) minute monitoring period, assuming the primary concerns are human health effects from particulate exposure. A sixty (60) minute averaging period is susceptible to short term excursions that are not representative of emissions or human exposure for an extended period of time.

*Response:* Short term exposures do pose health concerns such as coughing, burning eyes, sore throats, and other symptoms that could be attributed to fugitive dust. This has become evident by the two hundred sixty (260) fugitive dust complaints IDEM has responded to in the past two years. Other problems that can be attributed to fugitive dust include corrosive dusts attacking metal surfaces, dust adhering to surfaces such as paint overspray, and deposits on houses, vehicles, and other property.

*Comment:* IDEM should consider reestablishing fugitive dust limitations that are facility or location specific, such as based on the NAAQS level minus the yearly average of twenty-four (24) hour background concentrations measured at the nearest monitoring station. This would provide incentives for noncompliant facilities to reduce ambient PM<sub>10</sub> concentrations.

*Response:* The purpose of the fifty (50) micrometers per cubic meter (ug/m<sup>3</sup>) measurement is to address immediate health concerns such as coughing, burning eyes, sore throats, or other symptoms that could be attributed to fugitive dust. The 50 ug/m<sup>3</sup> standard also addresses nuisances and the unreasonable interference with the enjoyment of life and property as protected by IC 13-11-2-5. The draft rule provides, in the fugitive dust control plan, an incentive as well as a mechanism for compliance.

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD FOR ADOPTION OF RULES IN TITLE 326 UNDER IC 13-14-9.5**

IDEM requested public comment from March 1, 2000, through March 31, 2000, and from May 1, 2000, through May 30, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received a comment from the following party by the comment period deadline:

Indianapolis Power and Light, by Mark E. Shere (IPL)

Following is a summary of the comment received and IDEM's response thereto:

*Comment:* 326 IAC 6-4 is already noticed to be revised. Rules that IDEM has already identified as likely candidates for revision should be readopted separately. (IPL)

*Response:* IDEM agrees. This rulemaking, addressing 326 IAC 6-4, is the continuation of an existing rulemaking. A Second Notice of the fugitive dust rulemaking appeared in the March 1997 Indiana Register at 20 IR 1652. IDEM is republishing the Second Notice, with revised draft rule language, in this Indiana Register. IDEM requests comment on the revised draft rule language. This rule must be readopted and effective prior to January 1, 2002.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#96-16(APCB) Fugitive Dust

Kathryn A. Watson

Branch Chief

Office of Air Management

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0430.

## COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by March 5, 2001.

Additional information regarding this action may be obtained from Janet Perkowski, Rules Development Section, Office of Air Management, (317) 233-8628 or (800) 451-6027, press 0, and ask for Janet Perkowski (in Indiana).

## DRAFT RULE

SECTION 1. 326 IAC 6-4.5 IS ADDED TO READ AS FOLLOWS:

### Rule 4.5. Fugitive Dust Emissions

#### 326 IAC 6-4.5-1 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 all sources of fugitive dust and to other sources of dust as provided in section 6 of this rule. (*Air Pollution Control Board; 326 IAC 6-4.5-1*)

#### 326 IAC 6-4.5-2 Definitions

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

Affected: IC 13-15; IC 13-17

Sec. 2. As used in this rule, the following definitions apply:

(1) "Dust" means any finely divided solid or liquid material, excluding water or steam, that is not in combination with any other gaseous or particulate pollutant (uncombined water).

(2) "Excessive wind speed" means wind speed greater than:

(A) thirty (30) miles per hour, measured by a one (1) hour average of hourly recorded values; or

(B) forty (40) miles per hour, measured instantaneously;

at a monitoring location with a sensor height above the particulate monitor. The particulate monitor shall be located between two (2) and fifteen (15) meters above ground level.

(3) "Fugitive dust" means dust, whether from a single operation or a number of operations at a source, that:

(A) is emitted from any location, process, operation, or activity, including a point source such as a stack or vent;

(B) is or has been airborne; and

(C) escapes beyond the property line or boundaries of the property, right-of-way, or easement in which the location, process, operation, or activity is located.

(*Air Pollution Control Board; 326 IAC 6-4.5-2*)

#### 326 IAC 6-4.5-3 Finding of excessive fugitive dust

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

Affected: IC 13-15; IC 13-17

Sec. 3. Whenever any of the following occur, a source or sources generating fugitive dust shall be in violation of this rule, and the department shall issue a written finding of excessive fugitive dust:

(1) The average downwind concentration of fugitive dust exceeds one hundred fifty (150) micrograms per cubic meter and the average downwind concentration exceeds the average upwind concentration by at least fifty (50) micrograms per cubic meter for a time period not less than one (1) hour, subject to the following provisions:

(A) As used in this rule, "upwind" means the direction from which the wind is blowing at the start of the monitoring time period, plus or minus twenty-two and five-tenths (22.5) degrees.

(B) As used in this rule, "downwind" means the opposite direction (one hundred eighty (180) degrees) from the upwind direction, plus or minus twenty-two and five-tenths (22.5) degrees.

(C) Monitors shall be started and shut down within one (1) minute of each other.

(D) Monitors shall be placed at no less than two (2) meters and no more than fifteen (15) meters above the ground and located off the property of the source.

(E) Wind direction must remain within the directions established in clauses (A) and (B) at least ninety-five percent (95%) of the monitoring time period.

(F) Ambient air concentrations in this section shall be measured using the standard hi volume sampling and analysis techniques as specified by 40 CFR 50, Appendix B\*.

(2) Fugitive dust originating from the source is visible crossing the property line, boundary of the property, right-of-way, or easement on which the source is located. Visible fugitive dust shall be determined by observation by a designated representative of the commissioner who has been trained in accordance with 40 CFR 60 Appendix A, Method 9.\* The commissioner may designate as a representative an employee of the department or of a local agency.

(3) The department determines by a preponderance of the evidence, through secondary deposition analysis conducted in accordance with accepted sampling procedures, that fugitive dust originating from the source has crossed the property line, boundary of the property, right-of-way, or easement on which the source is located.

\*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 6-4.5-3*)

#### 326 IAC 6-4.5-4 Fugitive dust control plan

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) Not later than thirty (30) days after receiving a finding of excessive fugitive dust under section 3 of this rule, a source shall submit to the department a written fugitive dust control plan that will correct the excessive fugitive dust.

(b) The control plan shall consist of the following:

(1) If the origin of the excessive fugitive dust can be reasonably identified, then the control plan shall consist of specific measures designed to address specific activities causing excessive fugitive dust.

(2) If the origin of the excessive fugitive dust cannot be reasonably identified, then the control plan shall be source-wide.

(c) At a minimum, the plan shall contain the following information:

(1) The name and address of the source.

(2) The name and address of the owner or operator of the source.

(3) Identification of all processes, operations, and areas at the source that emit or have the potential to emit fugitive dust, including a map or diagram of the processes, operations, and areas identified, unless subsection (b)(1) applies, which would limit identification to the origin.

(4) Type and estimated quantity of materials that can cause fugitive dust that are handled at the source, unless subsection (b)(1) applies, which would limit identification of materials to the origin.

(5) Detailed description of control measures to be implemented to achieve compliance with this rule. Details may include the following:

(A) Specifications of any dust suppressant material, including the estimated frequency of application and concentration.

(B) Specification of the particulate collection equipment used as a fugitive dust control measure.

(6) A schedule for compliance with the provisions of the control plan.

(7) Other information necessary for the department to review the control plan.

(8) Record keeping and reporting requirements sufficient to ensure compliance with the plan.

(d) The department may request that additional information be provided by the source.

(e) The department shall approve a fugitive dust control plan if the department determines that the plan will reduce the excessive fugitive dust to the extent practicable. An approval may contain record keeping and reporting requirements sufficient to ensure compliance with the plan.

(f) The department shall not approve a fugitive dust control plan if the department determines that the proposed plan will not reduce the excessive fugitive dust to the extent practicable, or if the source fails to submit information required under subsection (c) or, if applicable, subsection (d).

(g) The department may issue a fugitive dust control plan, which shall be the approved plan, if:

(1) the department does not approve the plan submitted by the source; or

(2) the source fails to submit a plan within the time period set forth in subsection (a).

(h) The department may modify any existing operating permit to include the approved fugitive dust control plan. If no operating permit exists, the approved plan remains in effect until such time as the source requests, in writing, that the department withdraw or amend its plan and the department approves the withdrawal or amendment.

(i) The owner or operator shall submit amendments to the department for approval so that the fugitive dust control plan is current with the activities that caused the excessive fugitive dust at the source. Amendments shall be consistent with this rule. If circumstances at the source change in a way that significantly increases fugitive dust emissions, or if the plan does not adequately address excessive fugitive dust emissions, the department may require, in writing, that the owner or operator submit amendments to the plan not later than thirty (30) days after receipt of the department's written request. The department may issue amendments to the plan if the source fails to submit them within the thirty (30) day time period.

(j) Approval or issuance of a plan by the department does not limit the department's authority to issue amendments to the plan, if the department determines that compliance with the plan does not reduce the excessive fugitive dust to the extent practicable.

(k) After a finding of excessive fugitive dust and before a fugitive dust control plan is submitted, the department, if necessary to protect human health or the environment, may issue an order requiring implementation of control measures that will reduce or prevent fugitive dust until a control plan or amendments to a plan can be submitted and approved.

(l) The department may determine that multiple sources contributed to a finding of excessive fugitive dust. When this occurs, the department may, in the finding of excessive fugitive dust, require that each source prepare a fugitive dust control plan in accordance with this section.

(m) Failure to do any of the following, after a finding of excessive fugitive dust, constitutes a violation of this rule:

- (1) Submit a fugitive dust control plan within the time period set forth in subsection (a).
- (2) Submit amendments to a plan as required in subsection (i).
- (3) Upon the effective date of an approved plan, comply with the plan.
- (4) Comply with an order issued under subsection (k).

*(Air Pollution Control Board; 326 IAC 6-4.5-4)*

#### **326 IAC 6-4.5-5 Exceptions**

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

**Affected:** IC 10-4-1; IC 13-15; IC 13-17

**Sec. 5.** The following are exceptions and therefore are not considered fugitive dust for the purposes of this rule:

(1) Fugitive dust from a publicly maintained unpaved thoroughfare where no nuisance or health hazard is created by its usage or where the unit of government that maintains the thoroughfare determines that no means are available to finance the necessary road improvements immediately. A reasonable long-range schedule for necessary road improvements shall be submitted to the department to support the granting of this exception.

(2) Fugitive dust from construction or demolition where every reasonable precaution has been taken to minimize fugitive dust emissions, and where the owner or operator has evaluated whether the site of planned construction or demolition has an accumulation of bird or bat droppings at least two (2) inches thick and, if so, has contacted the local health department to receive advice on histoplasmosis prevention.

(3) Fugitive dust generated from agricultural operations, providing:

(A) every reasonable precaution has been taken to minimize fugitive dust emissions; and

(B) operations are terminated if a severe health hazard is generated due to prevailing meteorological conditions.

(4) Plumes from a stack or vent that:

(A) are visible when crossing the property line;

(B) are in compliance with other applicable rules; and

(C) do not downwash to less than ten (10) meters above the ground;

and there is no finding of excessive fugitive dust based on secondary deposition analysis.

(5) Fugitive dust caused by:

(A) excessive wind speed; or

**(B) drought that is a disaster under IC 10-4-1.**

*(Air Pollution Control Board; 326 IAC 6-4.5-5)*

**326 IAC 6-4.5-6 Motor vehicle dust sources**

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

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

**Sec. 6. (a) No vehicle being used for commercial or business purposes shall be driven or moved on any public street, road, alley, highway, or other thoroughfare unless such vehicle is so constructed, operated, or equipped as to prevent its contents from dripping, sifting, leaking, or otherwise escaping, to prevent tracking mud, or to create conditions that result in generation of dust that is or will become airborne.**

**(b) Failure to comply with subsection (a) is a violation of this rule.**

**(c) If subsection (a) is violated by a vehicle tracking mud, the department shall issue a written finding of excessive fugitive dust, under section 3 of this rule, to the owner or operator of the property from which the vehicle tracked the mud, and the owner or operator shall comply with section 4 of this rule. This subsection:**

**(1) applies only to property used for commercial or business purposes; and**

**(2) does not apply to mud tracked from the following:**

**(A) Publicly maintained unpaved thoroughfares where no nuisance or health hazard is created by its usage or where the unit of government that maintains the thoroughfare determines that no means are available to finance the necessary road improvements immediately. A reasonable long-range schedule for necessary road improvements shall be submitted to the department to support granting such an exception.**

**(B) Construction or demolition where every reasonable precaution has been taken to minimize mud being tracked off the site.**

**(C) Agricultural operations providing every reasonable precaution has been taken to minimize mud being tracked off the site.**

*(Air Pollution Control Board; 326 IAC 6-4.5-6)*

**SECTION 2. 326 IAC 6-4 IS REPEALED.**

***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 12, 2001, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on proposed new rules concerning fugitive dust emissions.*

*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 rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from Janet Perkowski, Rules Development Section, Office of Air Management, (317) 233-8628 or (800) 451-6027, press 0, and ask for Janet Perkowski (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register.*

*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) 233-1785. Speech and hearing impaired callers may contact the agency 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 Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.*

