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TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD #01-408(APCB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING COMPLIANCE MONITORING REQUIREMENTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules concerning compliance monitoring requirements for sources that are required to obtain operating permits, and a new section in the general provisions rule (326 IAC 1-1) concerning types of data that can be used in enforcement actions, in response to the United States Environmental Protection Agency's 1997 final rule (62 FR 8314) concerning credible evidence revisions. IDEM is also proposing technical corrections to rules at 326 IAC 3 and 326 IAC 7 concerning emissions monitoring requirements, source sampling procedures and testing, and reporting requirements for monitoring system malfunctions. If needed, this rulemaking may also include changes required by U.S. EPA to obtain approval of 326 IAC 3 into the state implementation plan.

IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 1-1; 326 IAC 1-2; 326 IAC 2-5.1; 326 IAC 2-6.1; 326 IAC 2-7; 326 IAC 2-8; 326 IAC 3; 326 IAC 7-2.

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

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

The purposes of this rulemaking are to:

- (1) establish a new rule for compliance monitoring requirements that will adopt the federal requirements under 40 CFR 64 and clarify compliance monitoring requirements, including compliance monitoring plan submittals, for sources required to obtain operating permits;
- (2) establish a new section concerning types of data that can be used in enforcement actions;
- (3) make technical corrections to existing rules in 326 IAC 3 and 326 IAC 7 concerning emissions monitoring requirements; and
- (4) if needed, make changes required by U.S. EPA to obtain approval of 326 IAC 3 into the state implementation plan.

"Compliance monitoring" refers to a large number of different types of data collection, measurements, and other information from which businesses, as well as regulatory agencies and the public, can determine whether they are in compliance with environmental requirements. It can include direct measurements of emissions, but also includes other approaches, such as observing visible emissions, monitoring of control devices or process operating parameters, sampling and analysis of fuels or raw materials, record keeping or inspection programs.

This rulemaking addresses two topics that were previously published in separate notices. A First Notice of Comment Period was published in the April 1, 1998, Indiana Register (21 IR 2607) concerning compliance assurance monitoring (#98-68). Another First Notice of Comment Period was published in the October 1, 1998, Indiana Register (22 IR 239) concerning monitoring requirements (#98-210). IDEM has published withdrawal notices for these two First Notice of Comment Period notices in this Indiana Register and in their place publishes this new First Notice of Comment Period.

Compliance Monitoring

There are three (3) provisions of the Clean Air Act (CAA) that address the compliance monitoring related requirements:

- Section 114(a)(3) of the CAA required the U.S. EPA to develop regulations for monitoring of certain units at major sources that are required to obtain permits pursuant to 40 CFR 70. U.S. EPA issued its final rule, Compliance Assurance Monitoring (CAM), 40 CFR 64, on October 22, 1997 (62 FR 54900). This federal regulation is targeted at Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR 64. The federal CAM rule was challenged regarding enhanced monitoring, the phase-in time of the rule, and credible evidence (NRDC v. EPA, 1999, 194 F.3d 130, September 9, 1999). The court held that the requirements of enhanced monitoring comply with the CAA and the phase-in time is reasonable.
- Section 114(a)(1) of the CAA outlines monitoring, record keeping and reporting requirements that may be required of any source of emissions. The requirements include: keeping records of control equipment parameters, production variables, or other data; installing, using, and maintaining monitoring equipment; and making reports to determine compliance with CAA or state implementation plan (SIP) requirements.
- Section 503(b)(2) of the CAA requires that Title V sources certify compliance with their permit conditions at least annually. A source owner or operator uses compliance monitoring to determine the compliance status of the affected emissions units.

Additionally, compliance monitoring and the associated record keeping requirements allow IDEM to determine that all sources required to have operating permits are in continuous compliance with the requirements of their operating permits.

In 1996, in order to address compliance monitoring requirements needed for operating permits, IDEM issued a document, "Title V Air Permit Compliance Monitoring Guidance." The guidance provided information and examples for use by sources to propose compliance monitoring plans in their Title V applications. The guidance document was developed with significant input from the affected sources. Information from compliance monitoring plans was then included in the operating permit to satisfy requirements in 326 IAC 2-7-5(3) concerning monitoring and related record keeping and reporting to assure information is provided to evaluate continuous compliance. The FESOP rules (326 IAC 2-8) are consistent with the Part 70 rules, and information from these plans was also included in FESOP permits.

Not all Title V and FESOP applications included compliance monitoring plans, but compliance monitoring requirements were included in the permit to satisfy requirements under 326 IAC 2-7-5(3) and 326 IAC 2-8-4(3). When a compliance monitoring plan was submitted, information from the plan was included in the permit. The permit content requirements under 326 IAC 2-5.1 and 326 IAC 2-6.1 state that the permit must contain monitoring, testing, and record keeping and reporting requirements to assure compliance with the permit and the underlying applicable state and federal rules.

The operating permit rules under 326 IAC 2-7 and 326 IAC 2-8 also require sources to certify compliance status and identify the methods used to determine compliance. The rules under 326 IAC 2-6.1 are similar and require sources to notify the department annually about the compliance status of sources with operating permits. This rulemaking will not affect sources permitted under 326 IAC 2-9 or 326 IAC 2-10.

In this rulemaking, IDEM proposes developing at least one new rule, 326 IAC 3-8, to implement the federal CAM requirements for Title V sources and to clarify existing compliance monitoring requirements, including compliance monitoring plan submittals, for Title V operating permits and for operating permits issued to sources pursuant to 326 IAC 2-5.1, 326 IAC 2-6.1, and 326 IAC 2-8. IDEM proposes that the new rule will apply to emissions units subject to an applicable requirement located at sources required to obtain an operating permit. The compliance monitoring provisions include, but are not limited to: parametric monitoring for emissions units and, if applicable, associated controls; defining excursions from parametric ranges; the requirement to take response steps when excursions occur; the requirement to prepare and submit compliance monitoring plans, record keeping and reporting requirements, and certification requirements.

Indiana's rules will adopt the minimum requirements of the federal CAM program while maintaining the basic elements of the state compliance monitoring program developed for the various operating permits program. IDEM anticipates that by approaching the proposed rules in this manner, the rules will better reflect the compliance monitoring envisioned by IDEM's operating permit rules and guidance documents. IDEM intends for the new rule to be consistent with 40 CFR 64, which states if the applicable requirement already contains sufficient compliance monitoring requirements, the emissions unit will be deemed to be in compliance with the rule requirements concerning compliance monitoring plan submittals.

Alternatively, IDEM could develop two new rules that would address the incorporation of CAM requirements and the clarification of other compliance monitoring requirements separately. IDEM invites comments about developing two rules to separate these issues for clarity.

Credible Evidence

IDEM is proposing to add a new section under the general provisions, 326 IAC 1-1, that will provide for the use of data other than specific reference test data under 40 CFR 60, Appendix A, known as credible evidence, to prove or disprove violations of the CAA or other applicable requirements. Indiana is required to incorporate credible evidence provisions into state rules consistent with the SIP call published by U.S. EPA in 1997 (62 FR 8314).

Technical Corrections and U.S. EPA Changes

IDEM has identified technical corrections that are needed in existing rules in 326 IAC 3 and 326 IAC 7 concerning emissions monitoring requirements. This rulemaking will address those corrections. IDEM proposes technical corrections to 326 IAC 3-5 that will clarify the quality assurance requirements that apply to flow monitors and reinstate requirements for reporting malfunctions of continuous monitoring equipment. IDEM will also propose corrections to 326 IAC 3-6 to include references to source sampling procedures conducted under 40 CFR 61. IDEM proposes adding substantive requirements to 326 IAC 3-6-5 for source testing to demonstrate compliance with the limit on particulate matter having aerodynamic diameters less than ten microns in diameter (PM₁₀). If needed, this rulemaking may also include changes required by U.S. EPA to obtain approval of 326 IAC 3 into the state implementation plan. U.S. EPA is currently reviewing 326 IAC 3 and anticipates notifying IDEM soon of any changes necessary to obtain approval.

A public meeting with interested parties is planned early in 2002 prior to publication of draft rule language in the Second Notice of Comment Period. Anyone interested in information about this meeting should contact Chris Pedersen at (317) 233-6868 or (800) 451-6027, press 0, and ask for 3-6868 (in Indiana), or via email at cpederse@dem.state.in.us. Please provide your name, address, phone number, and email address, if applicable, to receive further information regarding the public meeting.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all

factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Comments, whether mailed, hand delivered, or faxed, should be addressed as follows:

#01-408(APCB) Compliance Monitoring

Kathryn A. Watson, Chief

Air Programs Branch

Office of Air Quality

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 Quality, 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) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by January 2, 2002.

Additional information regarding this action may be obtained from Chris Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027, press 0, and ask for 3-6868 (in Indiana).