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TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #02-88

DIGEST

Amends 326 IAC 1-4-1; 326 IAC 4-1-4.1; 326 IAC 8-2-9; and 326 IAC 13-3-1 concerning the redesignation of Clark and Floyd Counties to attainment of the one hour ozone standard. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Section 7 Notice of First Hearing: April 1, 2002, Indiana Register (25 IR 2315).

Date of First Hearing: June 5, 2002.

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 twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on April 1, 2002, at 25 IR 2315, 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 April 1, 2002, through May 1, 2002, 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 June 5, 2002, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 1-4-1; 326 IAC 4-1-4.1; 326 IAC 8-2-9; and 326 IAC 13-3-1. No comments were made at the first hearing.

326 IAC 1-4-1

326 IAC 8-2-9

326 IAC 4-1-4.1

326 IAC 13-3-1

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 25 IR 3056, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Affected: IC 13-15; IC 13-17

Sec. 1. The air pollution control board incorporates by reference 40 CFR 81.315* **and 66 FR 53665 (October 23, 2001)*** concerning attainment status designations.

*~~This document is~~ **These documents are** incorporated by reference. Copies 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 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382;*

filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056)

SECTION 2. 326 IAC 4-1-4.1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-1-4.1 Open burning approval; criteria and conditions

Authority: IC 13-15-2-1; IC 13-17-3-4

Affected: IC 4-21.5; IC 13-12; IC 13-17-9

Sec. 4.1. (a) Burning not exempted by section 3 or 4 of this rule may be authorized by the issuance of an approval by the commissioner or the commissioner's designated agent after consideration of an approval application. Such burning may be authorized for, but not limited to, the following:

- (1) Burning for the purpose of fire training.
- (2) Burning of natural growth derived from a clearing operation, such as removal of natural growth for change in use of the land.
- (3) Burning of highly explosive or other dangerous materials for which no alternative disposal method exists or where transportation of such materials is hazardous.
- (4) Burning of clean wood products.
- (5) Burning of natural growth for the purpose of land management.

(b) The following criteria may be considered for approval under this section:

- (1) The applicant has demonstrated that alternative methods for disposal are impractical or prohibitively expensive.
- (2) There are not more than five (5) residences or structures within five hundred (500) feet of the proposed burning site.
- (3) There have been no open burning violations at the site of the proposed burning or by the applicant.
- (4) If the application involves a structure for fire training, the structure has not been demolished prior to training activities.
- (5) The burning site is located in a county not designated as a nonattainment area for PM₁₀ or ozone **and is not located in Clark or Floyd County**. The commissioner or the commissioner's agent may allow open burning in ~~such nonattainment~~ **these** areas, subject to conditions necessary to protect air quality.

(c) No approval shall be granted at any time for residential burning in Clark, Floyd, Lake, or Porter County.

(d) Any approval shall be subject to the following conditions unless otherwise stipulated in the open burning approval letter:

- (1) Only clean wood products shall be burned.
- (2) No asbestos-containing material shall be burned.
- (3) No burning shall be conducted during unfavorable meteorological conditions, such as:
 - (A) high winds, temperature inversions, or air stagnation; or
 - (B) when a pollution alert or ozone action day has been declared.
- (4) Burning shall be conducted during daylight hours only and all fires shall be extinguished prior to sunset.
- (5) If at any time the fire creates:
 - (A) an air pollution problem;
 - (B) a threat to public health;
 - (C) a nuisance; or
 - (D) a fire hazard;

the burning shall be extinguished.

- (6) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.
- (7) The approval letter shall be made available at the burning site to state and local officials upon request except during emergency burning.
- (8) Adequate fire fighting equipment shall be on-site for extinguishing purposes during burning times.
- (9) No burning shall take place within:
 - (A) one hundred (100) feet of any structure or powerline; or

- (B) three hundred (300) feet of a frequently traveled road, fuel storage area, or pipeline.
- (10) Fires must be attended at all times until completely extinguished.
- (11) All burning must comply with other federal, state, or local laws, regulations, or ordinances, including 40 CFR 61 Subpart M* (National Emissions Standards for Asbestos).
- (12) No waste that is regularly generated as a result of a routine business operation shall be burned.
- (13) The material to be burned shall not exceed one thousand (1,000) cubic feet.

(e) An approval letter shall be valid for no longer than one (1) year from the date of issuance. However, an approval letter may be valid for as long as five (5) years if the approval application is accompanied by an open burning plan. The plan shall:

- (1) contain a description of the open burning proposed for the period of time for which an approval letter is sought; and
- (2) be incorporated as a condition of the approval letter under subsection (d) or (f).

Any change in the plan must receive an additional approval letter, unless the change is to reduce open burning, or the change is to conduct burning exempted under section 3 of this rule. The plan shall be available for review upon the request by the department.

(f) The commissioner or the commissioner's designated agent may add conditions to an approval letter, as necessary, to prevent a public nuisance or protect the public health or the environment. Such conditions may be based on local air quality conditions, including whether the area is a nonattainment county as defined in 326 IAC 1-4-1 or has been redesignated from nonattainment to attainment status.

(g) A decision on the open burning approval letter is subject to IC 4-21.5 (Administrative Orders and Procedures Act).

***This document is incorporated by reference. Copies 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 4-1-4.1; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3343; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)**

SECTION 3. 326 IAC 8-2-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-2-9 Miscellaneous metal coating operations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 9. (a) This section is applicable to the surface coating of the following:

- (1) Large and small farm machinery.
- (2) Small household appliances.
- (3) Office equipment.
- (4) Industrial machinery.
- (5) Any other industrial category which coats metal parts or products under the Standard Industrial Classification Code of major groups #33, #34, #35, #36, #37, #38, and #39.

(b) This section is not applicable to the surface coating of the following metal parts and products or to the following types of coating except as indicated in subsection (c):

- (1) Any metal parts or products limited by other sections of this rule.
- (2) Exterior of airplanes.
- (3) Automobile refinishing.
- (4) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.
- (5) Exterior of marine vessels.
- (6) Maintenance coatings of production equipment.
- (7) The application of adhesives or preparation of adhesives.
- (8) Lubricants used to prevent sticking of internally moving parts.

(9) Chromium plated plastics.

(10) The application of coatings to burial caskets (Standard Industrial Classification Code 3995) if the source is not located in or adjacent to a county designated as nonattainment for ozone **or if the source is not located in or adjacent to Clark or Floyd County.**

(c) Commencing July 1, 1991, the operations described in subsection (b)(6) through (b)(9) shall comply with the requirements of this section.

(d) No owner or operator of a facility engaged in the surface coating of miscellaneous metal parts and products may cause, allow, or permit the discharge into the atmosphere of any volatile organic compounds in excess of the following:

(1) Fifty-two hundredths (0.52) ~~kilograms~~ **kilogram** per liter (four and three-tenths (4.3) pounds per gallon) of coating, excluding water, delivered to a coating applicator that applies clear coatings. A clear coating is a coating that lacks color or opacity and is transparent and uses the undercoat as a reflectant base or undertone color.

(2) Forty-two hundredths (0.42) ~~kilograms~~ **kilogram** per liter (three and five-tenths (3.5) pounds per gallon) of coating excluding water, delivered to a coating applicator in a coating application system that is air dried or forced warm air dried at temperatures up to ninety (**90**) degrees Celsius (~~90°C~~) (one hundred ninety-four (**194**) degrees Fahrenheit. (~~194°F~~)).

(3) Forty-two hundredths (0.42) ~~kilograms~~ **kilogram** per liter (three and five-tenths (3.5) pounds per gallon) of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings. Extreme performance coatings are coatings designed for exposure to temperatures consistently above ninety-five (**95**) degrees Celsius, (~~95°C~~); detergents, abrasive or scouring agents, solvents, corrosive atmospheres, outdoor weather at all times, or similar environmental conditions.

(4) Thirty-six hundredths (0.36) ~~kilograms~~ **kilogram** per liter (three (3) pounds per gallon) of coating, excluding water, delivered to a coating applicator for all other coatings and coating application systems.

(e) If more than one (1) emission limitation in subsection (d) applies to a specific coating, then the least stringent emission limitation shall be applied.

(f) Solvent sprayed from application equipment during cleanup or color changes shall be directed into containers. Such containers shall be closed as soon as such solvent spraying is complete, and the waste solvent shall be disposed of in such a manner that evaporation is minimized. (*Air Pollution Control Board; 326 IAC 8-2-9; filed Feb 9, 1988, 2:07 p.m.: 11 IR 1736; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2534; filed Apr 18, 1990, 4:55 p.m.: 13 IR 1678; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

SECTION 4. 326 IAC 13-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 13-3-1 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. (a) This rule applies to:

(1) all refiners, importers, carriers, or terminals who supply gasoline for use in the Clark and Floyd Counties ~~ozone nonattainment area~~ between May 1 and September 15 of each calendar year beginning in 1995; and

(2) all retail stations and other end users who sell or dispense gasoline in Clark or Floyd ~~Counties~~ **County** between June 1 and September 15 of each calendar year beginning in 1995.

(b) If federal reformulated gas (RFG) is required by operation of federal law to be sold in Clark and Floyd Counties or if the governor elects to participate in the RFG program, this rule shall no longer apply after the date that RFG is required to be sold. The department shall make all reasonable efforts to notify the affected parties listed in this section no later than thirty (30) days after federal law requires RFG to be sold or the governor's election to participate in the RFG program. (*Air Pollution Control Board; 326 IAC 13-3-1; filed Jul 6, 1995, 11:30 a.m.: 18 IR 2738; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 7, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 1-4-1, 326 IAC 4-1-4.1, 326 IAC 8-2-9, and 326 IAC 13-3-1.

The purpose of this hearing is to receive comments from the public prior to final 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 Chrystal Wagner, Rules Development, Office of Air Quality, (317) 234-1203 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

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. 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 Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Management