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TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD #03-67(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES AND NEW RULES CONCERNING NEW SOURCE REVIEW RULES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 2 and new rules within 326 IAC 2 concerning New Source Review Reform. 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: April 1, 2003, Indiana Register (26 IR 2473).

CITATIONS AFFECTED: 326 IAC 2-1.1-7; 326 IAC 2-2; 326 IAC 2-2.2; 326 IAC 2-2.3; 326 IAC 2-2.4; 326 IAC 2-2.5; 326 IAC 2-2.6; 326 IAC 2-3; 326 IAC 2-3.2; 326 IAC 2-3.3; 326 IAC 2-3.4; 326 IAC 2-5.1; 326 IAC 2-7-10.5; 326 IAC 2-7-11; 326 IAC 2-7-12.

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

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose

The purpose of this rule is to revise Indiana's New Source Review (NSR) rules to address changes published by U.S. EPA in the Federal Register on December 31, 2002 (67 FR 80186).

The new source review program is a critical tool for states to protect air quality. It is intended to ensure that new or modified sources of air emissions are built in a way that uses the most up to date pollution control technology or pollution prevention techniques. Technology that allows manufacturers to continue to produce high quality products while decreasing their impact on the environment is constantly developing. Sometimes progress is incremental and gradual, and other times there are dramatic advances that allow significant decreases in emissions that are cost-effective to implement. The policy behind new source review, therefore, is that as older plants are replaced or upgraded, increasingly effective pollution controls will be used and air quality will improve.

With brand new facilities, application of new source review is fairly straightforward. New plants with potential emissions over a certain threshold should go through the new source review process. A much more complicated part of the NSR program has always been deciding when a project proposed by an existing source ought to be reviewed under this program. Over the years, U.S. EPA has developed hundreds of pages of guidance to help business, the public, and state permitting agencies determine when a modification is subject to NSR. There are complicated provisions that allow companies to track recent increases and decreases at their operations so that the "net" impact of the proposed modification can be determined.

U.S. EPA's NSR reform addressed the issue of when modifications would require new source review under the federal system. It contains two key changes to the method used to determine the emission increase resulting from a physical change or a change to the method of operation. Those changes are further described below. A project that is exempt under any of the tests is exempt from NSR.

IDEM has analyzed the federal changes to determine their potential impact on air emissions and, therefore, air quality in Indiana. This analysis has included reviewing past IDEM permitting decisions to determine whether an environmentally protective outcome would have resulted under the new rules, reviewing similar analysis done by other states, and discussions with permit staff in other states. With a few exceptions addressed below, IDEM believes that adopting the federal changes will not worsen air quality in Indiana. IDEM invites comment on this conclusion and encourages commentors to be as specific as possible.

P.L.231-0003, SECTION 6, passed by Indiana legislators this year, prohibits the environmental boards from adopting a new rule before July 1, 2005, if the new rule would require certain industries to comply with standards of conduct that exceed federal

standards. A new rule 326 IAC 2-2.7 has been drafted to comply with this legislation.

Background of Federal Rules

On December 31, 2002, the United States Environmental Protection Agency (U.S. EPA) published a final rule concerning regulations governing New Source Review (NSR) programs mandated by parts C and D of Title I of the Clean Air Act (CAA). U.S. EPA stated that these revisions “are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection” (67 FR 80186, December 31, 2002). The applicability of the permit program is based on whether a new source or a modification to an existing source results in an increase in emissions above certain amounts. The December 31, 2002, rules change the method for determining the magnitude of the change in emissions resulting from a modification to an existing source. They do not change the federal provisions regarding applicability to new sources. These changes include how historical, or “baseline,” emissions are determined and an actual-to-projected-actual methodology for determining whether the modification will increase emissions. The new rules also provide optional applicability tests for sources that have accepted plantwide applicability limitations (PALs), sources that have designated clean units, and sources engaging in pollution control projects (PCPs). The December 31, 2002, rules revised amendments that were originally proposed in the July 23, 1996, Federal Register. More information regarding the background of the regulations is provided in the December 31, 2002, Federal Register notice.

Part C of Title I of the CAA requires states to include, in their state implementation plan (SIP), emission limitations and other measures that are necessary to prevent significant deterioration of the air quality in each region designated as attainment or unclassifiable for federal air quality health standards. Section 51.166 of Title 40 of the Code of Federal Regulations (40 CFR 51.166) contains the specific minimum requirements for a PSD program. The PSD program is a preconstruction review program that requires review of major new sources of air pollution emissions and major modifications of existing sources located in attainment areas where air quality meets health based standards. If a state does not have a PSD program as an approved part of its SIP, a state may be delegated the authority to implement and enforce the federal PSD program contained in 40 CFR 52.21.

Similar to the PSD program, Part D of Title I of the CAA requires states to include, in their SIP provisions, preconstruction permits for construction and operation of new or modified major sources located in nonattainment areas. Section 51.165 of Title 40 of the Code of Federal Regulations (40 CFR 51.165) and Appendix S of 40 CFR Part 51 contain the specific minimum requirements for a nonattainment new source review program.

The December 31, 2002, rule revisions require states with approved SIPs, including Indiana, to adopt the federal NSR reform amendments or equivalent provisions no later than January 2, 2006. States that have been delegated the authority to implement the federal rules are to implement the federal NSR reform amendments no later than March 3, 2003.

Numerous parties have filed a lawsuit in the D.C. Circuit Court challenging the final NSR rules claiming that they will result in greater air emissions than the current rules. They also requested that the court stay the final NSR rule revisions. The stay was denied, but the lawsuit has been put on an expedited schedule. This legal action may have an impact on Indiana’s rulemaking effort.

On July 30, 2003, U.S. EPA published a notice of reconsideration in the Federal Register (68 FR 44620) for specific parts of the December 31, 2002, NSR Reform rule. U.S. EPA must receive comments by August 29, 2003, and will make a final decision on the issues in the notice by October 28, 2003. This timeframe provides plenty of time for IDEM to consider U.S. EPA’s final decision of these issues prior to preliminary adoption of the state rules. The notice of reconsideration focuses on U.S. EPA’s evaluation of the potential environmental impact of the rule revisions and on five narrow issues. It does not indicate an intent to reconsider the basic policy changes contained in U.S. EPA’s revised rule. Interested parties are invited to comment on this reconsideration notice in comments submitted on this Second Notice of Comment Period.

Background of State Rules

Since September 30, 1980, IDEM has been U.S. EPA’s delegated authority for implementation of the federal PSD program in Indiana. Beginning in 1999, Indiana conducted state rulemakings to update and correct the state PSD rule at 326 IAC 2-2 so the rule could be submitted to U.S. EPA and approved into the SIP. After working informally with U.S. EPA Region V during the state rulemakings, Indiana submitted the updated and corrected PSD rule to U.S. EPA on February 1, 2002, for approval into the SIP. After a formal review, the U.S. EPA published a notice in the March 3, 2003, Federal Register informing the public that U.S. EPA conditionally approved, as a revision to the Indiana State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules submitted by Indiana. This approval went into effect on April 2, 2003, at which time the state PSD rule at 326 IAC 2-2 became federally enforceable under the CAA. This means that the PSD program is implemented by Indiana using the state rules in an approved SIP rather than implemented using delegated authority under the federal program. As a condition of the approval, Indiana must make the corrections to the state rule that U.S. EPA specified in the notice within one (1) year of the effective date of the federal rule. IDEM has commenced a rulemaking to correct this deficiency. The rule action to correct the deficiency in the PSD program (LSA #03-68) and this rulemaking on the NSR provisions (LSA #03-67) are completely independent of each other.

Having SIP approval means that Indiana’s PSD permits are subject to the same procedure as all other Indiana air permits, including those for new or modified major sources in nonattainment areas and minor new source review anywhere in the state. Draft permits

are subject to public review and comments by any affected party, including the U.S. EPA. Indiana's administrative and judicial review process is available to rule on objections to final permit decisions.

Indiana's nonattainment new source review rule in 326 IAC 2-3 has been approved as a portion of the SIP since December 6, 1994.

Any rule changes resulting from this rulemaking will be submitted to U.S. EPA for approval as an amendment to the SIP upon promulgation.

Applicable Federal Law

The Clean Air Act (CAA) mandates a new source review program for major sources of air pollution in parts C and D of Title I. This mandate is located in two (2) programs in the CAA: NSR PSD (part C) and NSR for Nonattainment areas (part D). The purpose of parts C and D is to protect human health and welfare from any actual or potential adverse effects from air pollutants. It also preserves the air quality in national parks, ensures economic growth will occur in a manner consistent with the preservation of existing clean air resources, and provides for careful evaluation of the consequences of permitting decisions both in Indiana and other states.

U.S. EPA, through 67 FR 80186, developed new NSR language regarding applicability at existing major sources. The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. However, according to the CAA section 116 (42 U.S.C. 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." Therefore, Indiana may adopt its own version of the NSR rules to comply with 67 FR 80241 as long as Indiana's rules are at least as stringent as U.S. EPA's NSR reform rules. U.S. EPA has been asked for clarification on a number of provisions in the new federal NSR rules. Until they are able to provide responses, it is not clear what deviations from the federal language will be approvable by U.S. EPA.

IDEM recognizes the importance as a matter of national environmental policy that the minimum elements of the new source review programs for major sources are established by the federal CAA and by federal regulations. Therefore, these requirements are expected to be generally consistent across the country. Nonetheless, it is not unusual for states to adopt rules that contain provisions that are more stringent than the minimum federal requirements or contain additional provisions that meld the federally-mandated program with existing state programs. Indiana has long-standing provisions that are more stringent with respect to maximum allowable increases under the PSD rules. In addition, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants (including mercury) under PSD.

In addition to those longstanding differences in Indiana's rule, IDEM is recommending a change to the retroactive designation of clean units because the federal provisions would result in greater air emissions than the current state program in a manner that is not consistent with the goals of the CAA. IDEM did consider whether to recommend changes to improve the ability to verify compliance, but concluded that relatively minor revisions to the existing nonrule policy document regarding annual compliance certification could accomplish that purpose.

The draft rules in this Second Notice integrate, for the most part, the federal changes into Indiana's permitting rules. It is not possible to incorporate the federal rules either by reference or verbatim, because the federal program relies heavily on state minor source permitting programs. Therefore, IDEM is also recommending changes to rules other than the major new source review rules as necessary to implement the federal provisions, including fees, and other changes that better capture the intent of the U.S. EPA. Following is a discussion of areas where the draft rules differ from, clarify, or supplement the federal rules, or fill a gap in state language.

Key Elements of the Federal NSR Rule and the Draft State NSR Rule

Following is a discussion of the key provisions of the draft rule:

IDEM's draft rule differs from the U.S. EPA's NSR Reform rule as follows:

- Continues to regulate the hazardous air pollutants that are currently regulated under the definition of "significant" in 326 IAC 2-2-1. As a result, the definition of "regulated NSR pollutant" in 326 IAC 2-2-1 has been modified from the federal definition to include asbestos, beryllium, mercury, and vinyl chloride. The federal rule provides less protection to the public in this respect. IDEM recommends that Indiana continue to require preconstruction review of projects that emit these toxic pollutants to prevent backsliding of current requirements.
- Adds language that was not in the federal rule to provide a mechanism to clearly establish the production capacity, throughput, or potential to emit for a unit that is designated as a clean unit. The phrase "such as potential to emit, production capacity, or throughput" was added in the following portions of the rule: 326 IAC 2-2.2-1(g)(4); 326 IAC 2-2.2-2(h)(4); 326 IAC 2-3.2-1(f)(4); and 326 IAC 2-3.2-2(h)(4). In the preamble to the federal NSR reform rules, U.S. EPA clarified that it intended to prohibit increases in the production capacity or throughput from the clean units beyond the limitations specified in the clean unit designation approval. In addition, the initial demonstration to show that the allowable emissions from a clean unit will not cause or contribute to a violation of the NAAQS or PSD increment or an air quality related value (AQRV) will not be preserved throughout the span of the clean unit designation if it is not established in the approval. Therefore, IDEM proposes to establish

the production capacity, throughput, or potential to emit as basis for BACT or LAER in the clean unit designation approval to help owners and operators and the public clearly identify the scope of a modification and its impact on the clean unit designation. This will reduce uncertainty and confusion regarding what changes may invalidate a designation. This change from the federal regulations will help with establishing requirements that are consistent with intent stated in the preamble, are beneficial to the environment, and are easier to implement.

- IDEM agrees with the principle of designating certain very well controlled sources as “clean”. As long as the source continues to operate in accordance with its permit limit and conditions and does not increase its capacity to emit pollutants, the owner or operator can modify the source without going through review. However, certain specific elements of the federal clean unit designation will result in less environmental protection than the current program. These elements concern the process for retroactively evaluating a unit that did not go through a BACT or LAER permit process at the time of construction, what U.S. EPA calls “comparable.” IDEM therefore proposes to adopt the clean unit designation process with the following changes:

- ▶ The federal process relies solely on information in the RACT/BACT/LEAR Clearinghouse (RBLC). That information is only an initial step in a complete BACT or LAER determination. IDEM routinely reviews sources of additional information such as the actual permit documents, the results of performance tests, any subsequent permit modifications, and the compilation of emissions information collected by EPA to develop NESHAPs under Section 112(d) of the Clean Air Act. The federal rule states that a control technology is presumed to be comparable to BACT level if it achieves an emission limitation that is equal to or better than the average of emissions limitations achieved by all the sources documented in the RBLC database for which a BACT or LAER determination has been made within the preceding five years and for which it is technically feasible to apply the BACT or LAER control technology. The federal rule also states that the control technology is presumed to be comparable to a LAER level if it achieves an emission limitation that is at least as stringent as any one of the five best performing similar sources in the RBLC database for which a LAER determination has been made within the preceding five years. This can clearly result in a clean unit designation with emissions that are greater than would have been established under the PSD or nonattainment NSR SIP. While the process for establishing the emission level for a clean unit are less than those required to perform a real BACT or LAER determination, they can still be significant. Additional resources are required of both the applicant and the agency to perform the air quality analyses required under the federal rule. Based on these concerns, IDEM proposes an evaluation equivalent to the BACT or LAER level of control evaluation that the emissions units that are automatically designated clean units must undergo, thus ensuring consistency and improvement in air quality by maximizing emissions reductions.

- ▶ IDEM proposes that emissions units with control technologies that are up to ten years old and were not approved under a major new source review permit program be reviewed under current standards for BACT and LAER. This may require more resources for the units that can qualify under this test, but the units approved would be cleaner and the test would be available for ten years from the determination. Resources would not be expended on emission units that do not qualify under this test. IDEM does not propose to change the federal provisions that provide this test to sources that have obtained major new source review permits in the past or that undergo BACT or LAER review in the future. With these changes, the clean units under the draft state rules will be cleaner than those under federal rules, and less resources will be needed to obtain or approve the clean unit. Also, under IDEM’s suggested changes the source would get the clean unit designation for a full ten years.

IDEM draft rule language that is not in U.S. EPA’s NSR Reform rule, but is consistent with U.S. EPA’s intent and necessary to implement the changes:

- Prohibits the issuance of a plantwide applicability limitation (PAL) for a pollutant for which an area is classified as extreme nonattainment. This prohibition was included in the preamble for the federal NSR reform (refer to 67 FR 80217), but was not included in the rule language. IDEM included the language to clarify that if, in the future, an area of Indiana is designated as extreme nonattainment, IDEM will not issue PALs for that pollutant in that area.
- Includes specific provisions in 326 IAC 2-3.3-1 (g) and (h) to require a source to obtain offsets for a significant net increase in collateral emissions from a pollution control project (PCP) if the area is classified as nonattainment for the collateral pollutant or to obtain offsets for an increase in volatile organic compound (VOC) emissions that is not de minimis in an area that is classified as serious or severe nonattainment for ozone. This requirement was included in the preamble for the federal NSR reform (refer to 67 FR 80237), but was not included in the rule language. IDEM included the language to clarify that sources are required to obtain offsets on a one-to-one ratio to demonstrate that the PCP will not cause or contribute to air quality violations in a nonattainment area.
- Adds provisions for termination/revocation of PALs in 326 IAC 2-2.4-15 and 326 IAC 2-3.4-15. The federal rule did not contain a specific mechanism for terminating or revoking a PAL. IDEM proposes provisions for the termination or revocation of a PAL if a source requests to terminate a PAL before the ten year period expires or if IDEM needs to revoke a PAL before the ten year period expires if a source does not comply with the limitations. These provisions are similar to the federal expiration provisions for a PAL. The state rule includes provisions for reallocating the emissions or reestablishing the limits that applied to the emissions units prior to when the PAL was established. This will ensure that the emissions from these units do not exceed significance levels for applicability and the environmental benefits of a PAL continue after termination.

- References clean unit designations in the air quality analysis section applicability in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 and the source information section in 326 IAC 2-2-10. Since IDEM removed the clean unit provisions from 326 IAC 2-2 and included it in a separate new rule, it may no longer be clear that the existing modeling and air quality analysis methods apply to clean unit designations when an air quality analysis is required. Therefore, IDEM clarified that the existing procedures should be followed for any required air quality analyses and that IDEM has the authority to require that the applicant submit this information.
- Revises or adds the following provisions in the Part 70 source modification provisions at 326 IAC 2-7-10.5:
 - (1) Revises the significant source modification provisions regarding pollution control project exclusions in 326 IAC 2-7-10.5(d)(8) such that the rule only requires that unlisted projects (i.e., those that are not listed in the definition of “pollution control project” in 326 IAC 2-2-1 or 2-3-1) must get an approval to use the pollution control project exclusion prior to beginning construction, in accordance with the provisions in 326 IAC 2-2.3-1 and 326 IAC 2-3.3-1.
 - (2) Adds the provision in 326 IAC 2-7-10.5(d)(10) to provide the approval mechanism for a clean unit designation in accordance with 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2 for a unit that does not go through major NSR.
- Adds a provision to the Part 70 administrative amendment requirements at 326 IAC 2-7-11(a)(8) to clarify that this mechanism may be used to incorporate those changes listed that are exempt from source modification requirements.
- Adds the following provisions to the Part 70 permit modification requirements at 326 IAC 2-7-12:
 - (1) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(F) to provide the mechanism for IDEM to incorporate the permit requirements for a clean unit designation for a unit that has gone through major NSR.
 - (2) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(G) to provide the mechanism for IDEM to incorporate the applicable permit requirements for a pollution control project exclusion for a listed pollution control project.
 - (3) Adds a significant permit modification provision at 326 IAC 2-7-12(d)(1) to provide the mechanism for IDEM to establish, renew, terminate, revoke, or revise a PAL.
- Revises the fee requirements in 326 IAC 2-1.1-7(3)(D) to establish fees for the review and issuance of clean unit designations for units that did not go through major NSR. This review will be similar to the control technology analyses for BACT under 326 IAC 2-2-3, or LAER, therefore IDEM proposes a similar fee. Revisions to 326 IAC 2-1.1-7(3)(C) were not required because the language already requires the appropriate fee for any air quality analysis required by 326 IAC 2-2 or 326 IAC 2-3.
- Adds provisions to the fee requirements in 326 IAC 2-1.1-7 to establish fees for the review and issuance of a PAL. The fee will be based on the limit in tons for each PAL pollutant. The fee is \$40 per ton per PAL pollutant, not to exceed \$40,000. IDEM believes this level of fee is appropriate given the complexity of developing PAL conditions. IDEM expects these permits to be more difficult to write and enforce than the Title V operating permits, for which the annual fee is \$33 per ton.
- Adds the phrase “or LAER” to the language taken from the federal rules in several subsections of 326 IAC 2-2.2-1 and 2-2.2-2. The purpose of this was to clarify that LAER also satisfies BACT because LAER is at least as stringent as BACT.
- Adds the phrase “to the extent quantifiable and to the extent they affect the project” to 326 IAC 2-2-1(e)(1)(A) and (e)(2)(A) and 326 IAC 2-3-1(d)(1)(A) and (d)(2)(A). The purpose of adding the phrase was to clarify that emissions from startups, shutdowns, and malfunctions do not have to be included in certain instances. If such emissions are not quantifiable, sources could not estimate them to include them in calculations. If the emissions are not expected to be affected by the project (e.g., no additional startups or shutdowns or malfunctions are expected due to the implementation of the project), sources do not need to include them in the calculations.

IDEM draft rule language that is not directly from NSR Reform but is a suggested change:

- Adds language from 40 CFR 51.165(a)(3)(ii)(G) to 326 IAC 2-3-3(b). This language was added directly from the federal rule because it is referenced in the new definition of “baseline actual emissions” in 326 IAC 2-3-1, but the language was not included in the current SIP-approved version of 326 IAC 2-3.
- Adds language to the applicability criteria for clean units in 326 IAC 2-3.2-1 and 2-3.2-2 to clarify that the clean unit test can be used when reviewing a modification to determine if it is de minimis in an area that is classified as serious or severe nonattainment for ozone if the modification does not otherwise cause the emission unit to lose clean unit status. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. Since the purpose of the clean unit designation is to provide flexibility to clean units as long as the clean unit status is preserved, IDEM clarified that the unit would not have to evaluate a modification at a clean unit to determine if it was de minimis as long as the clean unit status is preserved.
- Adds language to the applicability criteria of 326 IAC 2-3-2 that clarifies that the de minimis test must still be used for increases in VOC emissions in areas that are classified as serious or severe nonattainment for ozone and that the two step test that determines if an increase is significant and a significant net emissions increase should not be used in place of the de minimis test in those areas. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. The language is necessary because the de minimis test does not use emissions increases and decreases in the same way as the test for a significant net emissions increase.

- Requires new sources that are major stationary sources to get a Part 70 permit immediately instead of a minor source operating permit (MSOP) with the requirement to apply for a Part 70 permit within twelve months of beginning operations. This change was made to 326 IAC 2-5.1 to ensure that new major stationary sources will be able to receive clean unit designations in their Part 70 permit and to avoid past confusion caused by issuing major stationary sources temporary MSOPs.
- Revises 326 IAC 2-3-2(a) to clarify the meaning of the phrase “as of the date of submittal of a complete application”. U.S. EPA required that similar language that was in 326 IAC 2-2-2 be changed to clarify the meaning of the phrase when U.S. EPA reviewed 326 IAC 2-2 for SIP approval. Therefore, as a proactive measure, IDEM revised 326 IAC 2-3-2(a) in a similar manner to clarify the phrase’s meaning.
- Changes the term “uncontrolled emission rate” to “potential to emit” in 326 IAC 2-3-3(b)(4). This change was made to make the state language consistent with current federal rule language at 40 CFR 51.165(a)(3)(ii)(A).
- Adds language from 40 CFR 51.165(a)(5)(i) to 326 IAC 2-3-3(a) concerning severability. This change was made since this federal language is required by the minimum SIP requirements contained in 40 CFR 51.165.
- Removes the term “federally” from uses of the term “federally enforceable” in the definition of “allowable emissions” in 326 IAC 2-3-1(c) and the definition of “potential to emit” in 326 IAC 2-3-1(ii). IDEM removed this term to make the terms consistent with the PSD definitions and since court decisions in 1995 (Nat. Mining Assoc. v. U.S. EPA, 59 F.3d 1351 (D.C. Cir. 1995) and Chem. Manufacturer’s Assoc. v. U.S. EPA, 70 F.3d 637, (D.C. Cir. 1995)) vacated the requirement. The term “enforceable” will now allow terms that are enforceable by the state as well as the U.S. EPA.
- Removes the term “federally” from the current 326 IAC 2-3-2(c). This change was made to make the state language consistent with current federal language at 40 CFR 51.165(a)(5)(ii) to avoid SIP approval issues later since the provision is more stringent in the federal language. It is not related to the court decision in Chemical Manufacturer’s Association, et al. v. EPA.
- Adds the definition of “federally enforceable” to 326 IAC 2-2-1 and 326 IAC 2-3-1. Since this term is used in the federal rules, the federal definitions from 40 CFR 51.166 and 40 CFR 51.165 were added to the state rules.
- Changes a reference in the definition of “net emissions increase” in 326 IAC 2-3-1 from “regulations approved under 40 CFR 51.160 through 40 CFR 51.165” to “regulations approved under 40 CFR Part 51, Subpart I.” IDEM changed this reference to make the definition consistent with the definition in 40 CFR 51.165. The current reference did not include 40 CFR 51.166, which is also a section included in 40 CFR Part 51, Subpart I.
- Revises the provisions for claiming emissions reductions for offset credit for shutdowns of sources in nonattainment areas in 326 IAC 2-3-3(b)(5). When 326 IAC 2-3-3(b)(5) was originally adopted, a version of the Emission Offset Interpretive Ruling from 1979 was used. On June 28, 1989, U.S. EPA revised the interpretive ruling and 40 CFR 51.165. The provisions restricting the use of prior shutdown credits were relaxed for states that had an approved attainment plan because U.S. EPA stated that there were adequate safeguards to prevent abuses under an approved SIP because the SIP provides independent assurance of reasonable further progress. In addition, the U.S. EPA reasoned that the offset rules should encourage the construction of new sources that result in progress toward attainment by replacing older, dirtier sources. Additional restrictions regarding the timing for the shutdown and the date of the most recent attainment demonstration and emission inventory were included as safeguards. IDEM never revised 326 IAC 2-3-3 to reflect these federal revisions. Therefore, IDEM has proposed to update this portion of the rule during this rulemaking.
- Adds a provision to language taken from the federal rules in 326 IAC 2-2.4-6 and 326 IAC 2-3.4-6 to clarify what level should be added to the baseline actual emissions when establishing the PAL level for VOC emissions in an area that is classified as serious or severe nonattainment for ozone. The federal rules have not been updated to include provisions of Section 182(c)(6) of the 1990 CAA Amendments that require that a de minimis test be used instead of the typical “significant net emissions increase” test in an area that is classified as serious or severe nonattainment for ozone. The state rules include these provisions. Therefore, IDEM clarifies that the de minimis level should be used for these areas in lieu of using the federal language that broadly references the significant levels in the CAA.

Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. The amendments to the federal NSR rules provide options available to sources rather than requirements. The state rules are revised and are more stringent in some areas as described in the previous section, “Differences Between the Federal NSR Rule and the Draft State NSR Rule”, in the first list titled, “IDEM’s draft rule differs from the U.S. EPA’s NSR Reform rule...”.

Potential Fiscal Impact

The fiscal impact on regulated sources is expected to be positive. Because the new rules are expected to be neutral or beneficial in terms of environmental impact, no adverse fiscal impact or health care costs is expected.

In the course of the federal rulemaking on NSR Reform, U.S. EPA was required to assess both the costs and the benefits of the intended regulation. This assessment was then submitted for review and comment. Therefore, costs have already been assessed in the federal rulemaking process. In addition, the Public Law 104-4, Unfunded Mandates Reform Act, requires an assessment if the

cost of a federal rule will be greater than \$100 million dollars on the regulated community and the states and local regulatory agencies. This assessment has been completed for the federal rule and U.S. EPA indicated the rule will provide an opportunity for a savings to the regulated community with no adverse impact on public health.

Regulated entities should see significant savings because many modifications that were subject to PSD and for which the state currently collects fees will be exempt under the new rules. The fees associated with these modifications will no longer be required. This will result in a reduction in fees collected by state government. No fiscal impact on local government is anticipated.

Currently, the fee associated with a PSD modification review is usually greater than \$15,000. Under the new rules, many of these modifications will now be exempt from PSD and only required to get a Part 70 minor source modification at \$500, a significant source modification at \$3,500, or a permit modification for which there is no cost. A PSD review currently requires payment of a significant source modification fee in addition to the PSD fees.

There will be no fees for automatically designated clean units. If a source otherwise applies for a clean unit designation, IDEM proposes a fee consistent with the current BACT review and air quality analysis fee.

For pollution control projects, the \$3,500 fee for the listed projects has been removed, resulting in a savings for the source and a reduction in fee collection by the state.

For a source that applies for a PAL, the fees in 326 IAC 2-1.1-7 are anticipated to be less than the fees associated with ten years of modifications that the PAL would replace. The state would receive fewer fees for this option. IDEM invites comment on the fees associated with a PAL and encourages commentors to provide cost information if possible.

It is unknown how many sources may choose to apply for the option of a clean unit designation, pollution control project, or plantwide applicability limitation. Therefore, it is not clear whether the fiscal impact (cost or savings) of choices made under the new rules will exceed \$500,000.

Public Participation and Workgroup Information

IDEM has established an external workgroup to discuss this rulemaking. The workgroup includes a cross section of stakeholders and is open to all interested parties.

Public meetings have been held on March 6, June 30, and July 22, 2003. The minutes from these meetings, any future meetings, and other information regarding this rulemaking can be viewed at IDEM's NSR Reform Information page at <http://www.IN.gov/idem/rules/air/apcb0367/index.html>. A meeting to discuss this Second Notice is scheduled for September 9, 2003, at 2:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room C, Indianapolis, Indiana. Future public meetings will be posted to the Web site. IDEM will continue to work with all interested parties throughout this rulemaking process.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Chris Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana), or at cpederse@dem.state.in.us. Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from April 1, 2003, through May 1, 2003, 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 parties by the comment period deadline:

- Citizens Action Coalition of Indiana (CAC)
- Eli Lilly and Company (ELC)
- Hoosier Environmental Council (HEC)
- Indiana Cast Metals Association (ICM)
- NiSource (NIS)
- Save the Dunes Council (SDC)
- Save the Valley (STV)
- United States Steel Corporation-Gary Works (USS)
- Valley Watch, Inc. (VWI)

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

Comments About Whether Indiana Should Adopt the Federal Changes

IDEM received several general comments regarding adoption of the federal NSR changes ranging from incorporating by reference to not adopting any of the federal changes. IDEM has reviewed the federal rules and made some necessary changes but overall feels the rules will not result in a significant decrease in air quality in Indiana.

Court Challenge to Federal Rules

Comment: Given that the Bush NSR rollbacks are being challenged in court, we believe it is premature for IDEM to be proposing

changes to Indiana's NSR rules to comport with the rollbacks. If the litigation challenging the federal rollbacks is successful, Indiana residents would receive less protection than under the current rules until the current rules could be restored. Indiana should reject the Bush NSR rollbacks. (CAC) (HEC) (SDC) (STV) (VWI)

Response: It is unclear when the federal court proceedings will be resolved, though the court has indicated it intends to proceed expeditiously. Briefs are due in the U.S. District Court this fall. Changes to the federal rule that occur during the process of adopting the state rule can be incorporated into this rulemaking effort or, if necessary, a new rulemaking can be initiated to address any future federal changes. IDEM acknowledges that the legal challenge may ultimately result in changes to the federal rules and it is appropriate to monitor this issue very closely as rulemaking proceeds.

Emissions Should Not Increase Under New Rules

Comment: If IDEM proceeds with the NSR rule changes, we believe that an underlying principle that must guide any proposed changes to Indiana's NSR rules is that no change results in increased emissions or authorizes increased emissions when compared with the current NSR rules. IDEM's proposed rules must not allow backsliding in Indiana's efforts to achieve cleaner air. (CAC) (HEC) (SDC) (STV) (VWI)

Response: While there will most likely be situations where a given project may not be regulated as strictly under the new rules, overall, with the specific changes IDEM is suggesting, the revisions will not worsen air quality in Indiana. Briefly summarizing the four basic elements of the new rule, IDEM believes that today's proposal is consistent with IDEM's views of: the goals of the CAA; the goals and requirements of Indiana's air permitting programs; and protecting air quality.

The new rules' approach to basic applicability (projected actual emissions minus baseline emissions) more clearly focuses on emissions increases that are caused by a physical change or change in the method of operation. It takes into account the fact the emissions vary year to year based on the level of production and that not every change directly or indirectly causes emissions to change. It also does not allow for backsliding from the benefits derived from air pollution control requirements that have been put in place since a particular baseline date. New significant emissions units will continue to be reviewed under Indiana's minor new source review program. That program routinely includes a review of the applicability of the major new source review programs and also provides authority to impose additional conditions necessary to prevent the change from contributing to local violations of air quality standards. The new rules require that when a permittee determines that a change at a source is exempt from major new source review, but there is a reasonable possibility that change could cause a significant emissions increase, the permittee must document its analysis and keep records of future emissions. The IDEM plans to revise the Nonrule Policy Document regarding Title V Annual Compliance Certifications to require that permittees specifically list these types of changes if they did not require approval under Indiana's minor new source review program.

The new rules establish a new applicability test for sources that are subject to a Plant-wide Applicability Limit (PAL). The PAL provisions limit the increase in actual emissions to less than significant levels. The PAL will be adjusted downward if new state or federal control requirements come into effect during the life of the PAL. A PAL is generally more restrictive than the current requirements because emissions are capped regardless of future increases in production and because under the current rule, a source can be modified numerous times with each modification increasing emissions by just less than a significant amount. The IDEM has included provisions to include a different approach in severe ozone nonattainment areas consistent with Indiana's existing rule.

IDEM believes that pollution control projects at existing sources should not generally be subject to major new source review. These are projects whose purpose is to reduce emissions. For instance, a thermal oxidizer controls VOC emissions, but increases NOx emissions. Sometimes these projects increase emissions of pollutants other than the one that will primarily be reduced. Actual significant increases in "collateral" emissions for the types of control devices on the list in almost all cases are increases in NOx resulting from the combustion of VOC and increases in CO due to changes the way that fuel is burned that are intended to limit NOx emissions. Increases in these emissions are not at all likely to cause local air quality violations of NO₂ or CO standards because ambient concentrations across the state are well below the standards. IDEM plans to address the impact that NOx emissions have on ozone concentrations in the development of the eight hour ozone SIP. IDEM has included a requirement to obtain offsets for increases in nonattainment areas. The rule also provides the opportunity to deny the use of the test if an increase in a pollutant would cause an air quality problem. Indiana's rules currently have special provisions for pollution control projects, but sometimes the approval process is more cumbersome than it needs to be, and can delay the implementation of these beneficial projects. These rule changes further simplify the approval process.

IDEM is concerned that U.S. EPA's provision for "comparable" BACT determinations will result in greater emissions than IDEM's current rules would allow. Therefore, the draft rules recommend a different, more environmentally protective, approach to evaluating this type of source for clean unit status. Emissions units that would qualify for designation as clean units under these draft rules must have undergone a strict control technology and air quality review. The draft rules require IDEM to identify the fundamental characteristics that could affect a BACT or LAER determination for a clean unit. The rule also requires review of any changes to those characteristics; those changes would only be approved if IDEM determines that the changes are consistent with the BACT or LAER determination. Any air quality impact from the change would also be reviewed to prevent air quality problems.

Emission increase in SIPs

Comment: Any action by Indiana to adopt the NSR rollbacks will necessarily require an analysis of the implications for these changes on attainment and maintenance plans, including the impact on future nonattainment areas, across the state. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: The CAA prohibits modification of clean air programs in effect before the Clean Air Act Amendments of 1990 unless the modification results in equal or greater emission controls. Because the current federal NSR rules were in effect prior to the enactment of the Clean Air Act Amendments of 1990, no modification to these rules may be made if those modifications result in greater emissions. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Both attainment and nonattainment SIPs allow for increases in emissions from new and modified sources consistent with the minor and major new source review provisions. Changes that would cause an increase in emissions will continue to be subject to new source review. IDEM has proposed revisions to the PAL and the pollution control project provisions that specifically address issues in nonattainment areas. Increases in emissions will continue to be managed under applicable maintenance plans.

Comment: The Clean Air Act (CAA) prohibits any revision to a State Implementation Plan (SIP) that interferes with attainment of an air quality health standard or other requirements of the CAA. Just as states can and indeed should take appropriate emission reductions credit for federal measures to lower emissions in attainment or maintenance plans, states must likewise assess federal measures that relax CAA requirements. At the time U.S. EPA proposed the 1996 new source review changes, U.S. EPA estimated that the revisions would represent a considerable weakening of the applicability of the new source review program. (CAC) (HEC) (SDC) (STV) (VWI)

Response: While these rules do reduce the applicability of major NSR, they have no impact on the applicability of Title V source modifications or permit modifications. Any source that constructed pursuant to 326 IAC 2-2 or 326 IAC 2-3 is operating in accordance with 326 IAC 2-7. The Title V program includes recordkeeping, reporting, testing, and monitoring requirements that will ensure compliance with applicable requirements. With these measures, IDEM maintains the ability to review changes at the source and determine if they have an impact on air quality. The intent of the federal rule amendments was to ease the burden of major NSR, not to eliminate review of new emission units altogether.

Fully Incorporate the New Federal Rules

Comment: The Indiana NSR program should incorporate all or as much as possible of the recently promulgated amendments to the federal NSR program. In our view, the December 31, 2002 federal NSR regulations will result in NSR being more clearly applicable to projects that merit BACT or LAER controls. Perhaps more importantly, the new federal rules make it easier to determine that NSR does not apply to projects that involve minor operational changes, relatively small capital investments to improve existing equipment, and/or no real increase in emissions. This will eliminate a great deal of confusion and uncertainty about NSR applicability. (ELC)

Response: IDEM believes that major NSR permitting resources should be expended on projects that result in actual significant emissions increases. IDEM proposes to adopt all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, preventing backsliding or avoiding decreased air quality protection. These variations are outlined in the "Differences Between the Federal NSR Rule and the Draft State NSR Rule" subsection of the "Subject Matter and Basic Purpose of Rulemaking" section of this notice.

Comment: The final NSR improvements will allow Indiana businesses the regulatory certainty necessary to compete in the world marketplace and provide for a level playing field when decisions must be made regarding plant investment and utilization. Indiana is bordered by two states that operate permitting programs under delegation of U.S. EPA. Both Michigan and Illinois are home to major integrated steel plants that will be granted the certainty and flexibility that these improvements provide. Indiana must not allow plants in other states to gain advantage over the plants located within its own borders. IDEM should adopt the improvements to the NSR rules as they were published in the December 31, 2002 Federal Register as expeditiously as possible. (USS)

Comment: IDEM should not alter the provisions of the new Federal NSR rule so as not to put Indiana at a competitive economic disadvantage with other states. The only alteration that should be considered is to implement appropriate adjustments to the structure of the federal provisions to match the format of the Indiana rules. We do not recommend incorporation by reference. While incorporation of the federal rules by reference would potentially reduce the volume of the rule language contained in title 326 of the Indiana Administrative Code, we believe having the complete language of the rule available in 326 IAC would be less confusing and more useful to both IDEM and the regulated community and better provide for the coordination of the Federal NSR rules with the other components of Indiana's permitting rules. (NIS)

Comment: The NSR rules should be promptly implemented through use of Indiana's incorporation by reference provisions for rulemaking. IDEM could implement some of the provisions of the NSR reforms with the current rules and further refine reforms with subsequent new rulemaking in those areas. (ICM)

Response: While IDEM agrees these rules should be adopted as expeditiously as possible, a direct incorporation by reference is not appropriate for this rule, both for practical reasons and because of the significant public interest in the rules. There is much public interest in examining the impact these rules will have on air quality in Indiana. IDEM also concurs that the major NSR program in Indiana should not provide a disincentive to industry in the state. IDEM is proposing the adoption of all provisions of the federal

amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit. Changes must be made to the minor NSR program and Title V operating program prior to implementation of the new NSR Reform provisions. The federal amendments will be integrated into our existing SIP-approved PSD and nonattainment NSR programs.

Comment: Lilly has seen no evidence that there is anything unique about Indiana that requires Indiana's NSR program to be different than the new federal rules. The issues that IDEM has raised in the first notice of rule making and in the various issue papers circulated in early April appear to be implementation issues more than conceptual disagreements with the new federal rules. With that in mind, Lilly believes that it would be appropriate for Indiana to adopt and implement the new federal rules as is, but to implement them with a watchful eye. If implementation issues arise after a few years experience, then it would be appropriate to determine whether changes to the basic program rules are necessary. (ELC)

Response: IDEM is proposing to adopt all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit. IDEM concurs that if implementation issues arise, it may be necessary to make changes to the applicable rules.

Comment: We agree with U.S. EPA that the new regulations will improve air quality – not diminish it. The clean unit applicability test, the pollution control project exemption, and the plant wide applicability limit (PAL), all serve as incentives for companies to reduce emissions in order to obtain flexibility. The basic applicability test assures that changes that truly cause emission increases will undergo NSR. Investments in new emitting equipment are still subject to NSR based on potential emissions, which ensures that new operations that are more likely to cause emissions to increase are more likely to undergo NSR. We urge IDEM to review U.S. EPA's analysis of the environmental impacts of the new NSR rules [<http://www.epa.gov/air/nsr-review/nsr-analysis.pdf>]. This report demonstrates the overall benefit of adopting the federal program. (ELC)

Response: IDEM has reviewed the supplemental analysis prepared by U.S. EPA.

Comment: We respect IDEM's interest in having a robust public discussion about new regulatory requirements. We disagree, however, that such a process is necessary for adoption of the new federal NSR rules. (ELC)

Response: Because of the high level of interest in the impact of the federal NSR rules on air quality in Indiana and the ongoing legal actions at the federal level, IDEM believes it is appropriate to encourage public discussion on this rulemaking. This will help educate the citizens of Indiana about the issue and will encourage feedback to IDEM throughout the rulemaking process.

Comment: Given Indiana's interest in implementing the NSR program as an independent SIP approved state, we believe adopting rules that mirror the federal rules provides the most likely route to retain that status. This was certainly Indiana's approach when seeking SIP approval prior to the federal rule changes, and we see no reason to endanger future SIP approval by deviating from the new federal rules. (ELC)

Response: The state NSR rules must be at least as stringent as the applicable federal requirements. IDEM will be working closely with U.S. EPA throughout the rulemaking process to ensure that any variations in the state rules are still at least as stringent as the federal requirements.

Comment: It is imperative to Lilly that NSR rules in Indiana provide ample flexibility for our research and manufacturing facilities to make changes quickly, efficiently, and with a high degree of certainty. (ELC)

Response: IDEM believes the new rules will provide flexibility that has not previously been available to major sources.

Comment: Under some interpretations, the current Indiana NSR rules can impose unnecessary administrative impediments and create uncertainty for companies making new products, improving existing products, improving operations, and reducing emissions. It can deter process and safety improvements, and it can cause companies to expend time and resources attempting to determine whether NSR applies to a project. (ELC)

Response: In the December 31, 2002 Federal Register, U.S. EPA stated that the changes to the NSR program "will reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency." IDEM is proposing the adoption of all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit.

Comment: Perhaps the most frustrating aspect of NSR is that some interpretations (we believe incorrect interpretations) of the rules can draw just about every activity that occurs at a site into the scope of the program. This causes NSR to apply potentially to the types of projects where it simply does not make sense for it to apply. (ELC)

Response: It is not IDEM's intent for the new provisions to draw activities at the site into the program inappropriately. IDEM will work with sources to ensure that applicability of the NSR provisions is handled correctly and that projects that should not be included are identified as such.

Federal Criteria for Approving Alternatives

Comment: Throughout this rulemaking process, we request access to the information provided by U.S. EPA to IDEM regarding the federal criteria for alternative language being approved into the SIP. (ICM)

Response: IDEM will make any information received from U.S. EPA regarding the federal criteria for alternative language available to all interested parties. Specific public records may be requested in accordance with IC 5-14-3.

Capital Investment Test

Comment: For the technology review to be effective, NSR should only apply to projects where there is a significant capital investment in the equipment or activity that causes the emissions. Matching NSR to significant capital investment is crucial because it is most cost-effective for companies to include the cost of BACT or LAER technology within the scope of a large capital investment in new or improved production capabilities. (ELC)

Comment: The amount of time that it takes to prepare an NSR application and obtain the permit affects the type of projects that should be covered by NSR. Because the whole process can take years from initial development of a permit application to final permit issuance, only large capital-intensive projects can easily absorb the NSR timeline into the overall project schedule. A smaller project that ordinarily takes a few months or less to complete cannot accommodate a long permitting process. These projects will be abandoned or substantially altered if NSR becomes a possibility. (ELC)

Response: The CAA requires that NSR be based on the impact to the environment, rather than capital investment. However, in the course of this rulemaking, the fiscal impact will be evaluated. IDEM encourages sources to submit information about costs of compliance with these rules for inclusion in the fiscal impact document.

Comment: It is important to recognize that many capital investments, regardless of whether new emission control systems are involved, have environmental benefits, and NSR should not act as a disincentive to implement them. New investments typically improve production operations, often for safer, more reliable, and more efficient operations. These investments allow companies to use less polluting materials, to manage operations to create less waste or emissions, and to enable greater production rates with fewer raw materials. Environmental regulations should encourage these types of small projects that have intentional or incidental environmental benefits. Unfortunately, NSR has been implemented in a way to discourage these projects. (ELC)

Response: The new federal rules offer flexibility in exchange for better environmental controls. This may provide better incentives for sources to implement them.

Real Emissions Increase Test

Comment: NSR must be designed to capture real emissions increases to assure protection of air quality. The air quality analysis under NSR is extensive, expensive, and time-consuming. The air quality analysis can take more than a year to complete and cost companies \$50,000 or more. It should not be required when the emission increases are theoretical, speculative, or unrelated to the changes being proposed. The air quality impact analysis under NSR makes the most sense when there is a real and significant emission increase attributable to the proposed project. (ELC)

Response: IDEM believes the new basic applicability test does focus on “real emissions increases” and therefore reduces some of the burden described in this comment. Many of the proposed modifications will now only be subject to the minor NSR program which is considerably less expensive and time-consuming, yet still allows for agency review and public participation.

Future Rulemaking Issues

Comment: IDEM’s attempt to raise the universe of possible issues associated with this anticipated rulemaking is appreciated, but we would like to reserve the right to raise new issues as the debate moves forward. (ICM)

Response: IDEM has presented issues that were identified by industry, citizens, and IDEM staff. These issues serve as a starting point for discussion. IDEM continues to request public input in notices such as this and through public meetings.

Workgroup to Meld Minor and Major NSR

Comment: Revisions to the major new source review requirements will require modification to the existing Indiana minor new source review rules, especially with relation to minor modifications at major sources. We suggest IDEM establish a workgroup to harmonize the new source review rules within the minor new source modification requirements. (NIS)

Response: IDEM concurs that changes are needed to the minor NSR and Title V operating program in order to implement the new federal NSR reform rules. Draft language has been proposed to address this issue. Further comments and suggestions on this draft language are welcomed. IDEM has held several public sessions on the rules, including one meeting to discuss a specific issue. If there is interest in convening one or more meetings to discuss the particular issue of harmonizing the major and minor new source review rules, IDEM will organize them.

Applicability Tests

The applicability test has always been one of the most complicated and controversial elements of NSR. The applicability test is self-executing and can be subject to several interpretations as to which modifications qualify for the program. Many comments were supportive of the new test; other comments were opposed to the new test and looked for assurance that it would not impair air quality. IDEM, having reviewed the federal rules and federal court cases, has incorporated the new applicability test.

Ten Year Look Back for Baseline

Comment: The Bush NSR rollbacks would allow sources to choose their baseline emissions for determining applicability based on the source’s most-polluting 24-month period over the previous ten years. If this is adopted in Indiana’s rules, it will establish a perpetual grandfathering of excessive emissions at old dirty units, and would allow increases in pollutants from some units above current levels. Such grandfathering and allowance of any increase in emissions should be rejected. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The current state rules allow any 24-month period over the previous five years for electric utility steam generating units

(EUSGUs) and the most recent 2-year period preceding the project or another earlier 2-year period that is more representative of normal source operation for non-EUSGUs. The rule revisions do not change the current baseline requirements for EUSGUs, new sources, and new emission units. For modifications to existing units, sources are required to adjust their baseline for enforceable limitations or controls that have went in to effect since their chosen baseline period. EPA believes ten years is a fair and representative time frame for encompassing a normal business cycle. Considering the limited scope of these changes and the required adjustments, IDEM believes that there will not be a significant increase in actual emission caused by this rule change. IDEM proposes to incorporate the new applicability test into the state program.

Comment: We strongly support an allowable look-back of ten years. This period of time is appropriate given the reality of business cycles to truly assess a reasonable baseline for emissions. Support for maintaining the ten year time frame is built via existing requirements including: 1) required data to support emissions baseline, 2) new or voluntary limits that have to be taken into account, and 3) changes in requirements associated with materials used that also must be taken into account. We do have some concerns that start up/shut down activities are not well defined and emissions associated with these processes may be unquantifiable. (ICM)

Response: IDEM proposes to implement the U.S. EPA ten-year look back period as part of the state program. U.S. EPA has required that start up/shut down/malfunction emissions be included, but relies on the state agency to develop a protocol for determining these emissions. IDEM was also concerned with the ability to quantify such emission. The agency requested input from industry and draft rule language is included in this Second Notice.

Actual-to-Potential v. Actual-to-Projected Actual Emissions

Comment: The Bush NSR rollback proposal to allow the “actual-to-potential” emissions applicability test to be replaced with an “actual-to-projected-actual” test should be rejected. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. Comparing actual to potential emissions is the only objective way of ensuring the applicability test is not abused. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: Lilly strongly supports the adoption of the actual-to-projected-actual emission increase test. Given the potential breadth of the definition of the potential scope of “modifications” under NSR [“...any physical change or change in the method of operation that results in a significant net emission increase...”], this aspect of the new rules exemplifies the notion of capturing the types of modifications that are best candidates for the technology requirements, air quality analysis, and time delays of NSR. (ELC)

Comment: We strongly support the move to an “actual to projected actual” emissions applicability test. Consistent with this position, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (ICM)

Response: The court decided in 1990 for electric utility steam generating units (EUSGUs) and EPA has determined for non-EUSGUs, that an actual-to-projected-actual test is the appropriate, more realistic way to determine emissions increases. Under the current major NSR program many sources request synthetic minor limits to avoid major NSR because they know their actual emissions will be significantly lower than their potential and not exceed the significant thresholds. The new rules will enable the sources to make these changes without a limit, however they must record their emissions to ensure there is no exceedance of the projected actual emissions. Many modifications that are not subject to the major NSR program will most likely be subject to the minor NSR program, which is based on the PTE of the modification, or the Part 70 permit modification requirements. If there is a modification that has a reasonable possibility of causing a significant emissions increase and has not been reviewed under the minor NSR program and did not otherwise require a Part 70 permit modification, it should be noted in the Part 70 annual compliance certification. Because of these safeguards, IDEM proposes to incorporate the new applicability test into the state program. Under these rules, sources may choose to use potential to emit to determine post-change emissions.

Actual-to-Actual Under Old Federal Rules

Comment: Lilly objects to IDEM’s characterization that the emission increase test under the old NSR rules and current Indiana rules is and always has been an actual-to-potential emission increase test. We believe those rules actually created a preference for an actual-to-actual test, and IDEM should acknowledge this preference. (ELC)

Comment: Given the magnitude of the changes contemplated in the WEPCO decision, Lilly believes that most modifications to existing equipment should be evaluated under an actual-to-actual test. Consequently, the new federal rules change very little about how NSR applicability should be determined. (ELC)

Response: An actual-to-actual test was only specifically applicable to EUSGUs. While IDEM believes that while Indiana’s current language regarding non-EUSGUs may be open to interpretation, that does not directly affect this rulemaking.

Applicability of Minor NSR to Projects Exempt from Major NSR

Comment: Lilly is greatly concerned by the suggestion in the April 2, 2003 Issue Papers that sources should be required to obtain minor NSR permits or submit notifications for each modification that a source determines is not subject to NSR by virtue of applying the new emission increase test. Because many sources make hundreds of “physical changes or changes in the method of operation”, this type of requirement would result in an overwhelming amount of permitting or paperwork from sources, with no environmental benefit. Major NSR and minor NSR have always been self-implementing programs – sources have always had the primary role in determining whether a change is subject to permitting. We do not think that U.S. EPA’s codification of the actual-to-actual emissions

test provides any new grounds for changing one of the more effective aspects of the program. (ELC)

Response: U.S. EPA created these provisions to ease the burden of major NSR, not to exempt NSR altogether. IDEM is not suggesting changes to the minor NSR program, other than implementation mechanisms. An increase in the potential to emit will continue to be the basis for the applicability of the minor NSR program.

Comment: We are concerned by the theme expressed throughout the April 1, 2003 notice and the IDEM issue papers that without some sort of IDEM review, sources will make errors in determining NSR applicability. We recognize that IDEM has expertise to offer in making applicability determinations, and sources should always be able to call on IDEM for assistance in making such determinations. It is inefficient, however, to presume that the system needs IDEM involvement in every determination to assure proper application of the program. To impose IDEM involvement in every case will only slow down projects and strain the resources of both the companies and IDEM. (ELC)

Response: IDEM acknowledges that this is largely a self-executing program and there are sources that feel they have the staff and expertise for making applicability decisions. However, many sources prefer the review process, and the compliance assurance they get from the review. In addition, some members of the public would like the opportunity for public review. IDEM is trying to accommodate all views in the proposed rule.

Comment: On the issue of reporting and record keeping, we support IDEM's use of the U.S. EPA proposed list of notification requirements prior to construction when using "actual to projected actual" calculations. (ICM)

Response: IDEM proposes to incorporate the applicability test into the state program. It should be noted that the major NSR sources are subject to the Part 70 operating program. Therefore, it is possible that changes may be subject to the minor NSR or Part 70 permit modification procedures when major NSR does not apply.

Compliance Consequences

Comment: We suggest that if a facility realizes a projection was incorrect associated with "actual to projected actual", BACT analysis should be done retroactively to the date the equipment was installed consistent with U.S. EPA's approach when dealing with clean units. (ICM)

Response: If the source reports or a compliance inspector discovers an exceedance of the projected actual emissions, IDEM has the authority to enforce major NSR requirements if a physical or operational change results in a significant net emissions increase at a major stationary source. This is an implementation and compliance issue and does not need to be addressed in the rule.

Comment: We would like to understand what ramifications are proposed when a facility reports an exceedance of their projected actual emissions. (ICM)

Response: Exceedances of the projected actual emissions may be referred to the Office of Enforcement for further action.

Changes in Applicability of Minor NSR

Comment: We recommend that the projected actual test should be an option for determining a limit on FESOPs and the "actual to projected actual" applicability test should be applicable to minor source modifications. (ICM)

Response: This rulemaking is intended to amend the state air permit rules in response to the amendments to the federal NSR amendments. The only changes being made to the minor NSR program is to create an implementation process for the new major NSR provisions. An increase in the potential to emit will continue to be the basis for the applicability of the minor NSR program.

Data Requirements

Comment: Our members have expressed concerns related to how much data will be adequate to document a twenty-four (24) month period. We would not support stack testing as a requirement, but would support the best available emission factor data including AP-42 when appropriate. (ICM)

Response: The data required to support the twenty-four (24) month period chosen by the source must adequately describe the operation and associated pollution levels for the emissions units being changed. These data should be sufficient to determine the unit's actual emission factors, utilization rate and the relevant information needed to accurately calculate the average annual emissions rate during the period of time selected. This is an implementation issue and does not need to be addressed in the rule any further than it is under U.S. EPA's requirements.

Public Notice for Pollution Control Projects

Comment: When notification is submitted to IDEM for changes, U.S. EPA does not require a public comment period. We recommend IDEM should incorporate this approach given that the public comment period only slows the process and delays environmental benefits that would be derived from pollution control projects and other proactive changes. (ICM)

Response: U.S. EPA does not require a public comment period from the notification, but they do require it when incorporating the change into the Part 70 Permit. Most pollution control projects take some time to procure and install. That can proceed because preconstruction approval is not needed. Operating permit amendments can be received during this time.

Clean Unit Designations

Clean unit designations are the first of the three alternate applicability scenarios available under the federal NSR changes. IDEM received mixed comments on the value of the designation. IDEM has reviewed the clean unit designation provisions and has incorporated much of the federal requirements with some revisions that will provide additional environmental benefits.

Public Notice and Stringency of Clean Unit Designations

Comment: If IDEM proceeds with a Clean Unit Exemption rule, it should require public notice and an opportunity for public comment on all proposed Clean Unit applications and designations. The rule must ensure that only pollution controls that meet or are more stringent than current BACT or LAER limits would qualify. The rules should also include a procedure for periodic review of units granted a Clean Unit Exemption to determine if technology has advanced sufficiently that new BACT or LAER limits would be applicable and a procedure to revoke the Clean Unit Exemption if the controls are deemed out-dated. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs that clean unit designations should be reviewed and established using a permit process that provides an opportunity for public review and comment in accordance with the federal rule requirements. IDEM proposes to require units requesting a clean unit designation that have not gone through major NSR to submit an application for a significant source modification and significant permit modification under sections 326 IAC 2-7-10.5 and 326 IAC 2-7-12, respectively. Units that have gone through major NSR automatically receive a clean unit designation. These would have been subject to the public notice and comment period procedures associated with the major NSR permit and would be available for public comment during the associated Title V permit or permit modification.

IDEM agrees that all clean units should be subject to the same standard of review for control technology assessment. Therefore, IDEM has drafted rule language requiring units that request a clean unit designation that otherwise do not go through major NSR to meet current BACT or LAER requirements, depending on the attainment status for the area where the unit is located as of the date the designation is requested. Based on this change to the federal NSR requirements, IDEM does not propose to periodically review each clean unit designation within the ten-year term to determine if technology has advanced significantly. IDEM is concerned that a period shorter than ten years will not provide the incentive to the sources in terms of flexibility and certainty associated with the investment in BACT or LAER level controls.

Comment: Determination of BACT or LAER emission levels should be made using only the best performing comparable control project, and should not allow averaging of BACT or LAER limits. Averaging such limits can allow a significant deviation from what are truly state-of-the-art pollution controls, and a decreased air quality benefit, because BACT or LAER limits can change significantly over time. Simply, the rules should require the use of the most stringent BACT or LAER limits for determining eligibility for the Clean Unit Exemption. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs and has drafted language to require a current top-down BACT or LAER analysis for clean unit designation requests for units that have not already gone through major NSR.

Affect of Redesignation on Clean Unit Status

Comment: The rules should sunset any Clean Unit designations in an attainment area that is subsequently designated nonattainment to ensure that Clean Units are not exempt from more stringent requirements under the nonattainment designation. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We are concerned by the suggestion that Clean Unit Designations should only be awarded retroactively to units employing the best of the previous BACT or LAER determinations, and not the average as specified in the federal rules. This serves the purpose of making more facilities ineligible for the designation, even though very little difference may exist between the control levels. The resource and time benefits of the Clean Unit Designation would be lost with little or no environmental gain in many cases. This is particularly true for VOC sources, where BACT and LAER controls have remained relatively static for many years now. (ELC)

Comment: Although Lilly recognizes that the change from attainment to nonattainment means that there is a greater need for emission reductions, we agree with U.S. EPA's position that the Clean Unit designation is not affected by redesignation. Having BACT level controls in nonattainment areas where they may not have existed before still provides a significant air quality benefit – probably more significant than the difference between BACT and LAER controls. Likewise, the loss of operating flexibility and saved administrative resources by terminating a Clean Unit designation may be significant in comparison to the potential difference in emissions from a source using BACT instead of LAER. (ELC)

Response: IDEM agrees with U.S. EPA that the clean unit designation should not be affected by redesignation and has not proposed to change the federal language regarding this provision of the clean unit designation. IDEM does not currently re-evaluate BACT for units that previously went through major NSR review when an area changes from attainment to nonattainment. The SIP planning process is used to determine what control measures should be implemented to improve air quality. Sometimes the plans require existing sources to implement additional controls. Clean unit designation will not preclude the requirement of additional controls if included in the SIP. Since clean units are by definition well-controlled sources and their potential to emit or physical and operational characteristics cannot be changed such that the basis for the clean unit designation will be altered, it should not be necessary for air quality purposes to revoke clean unit designations if an area is redesignated to nonattainment. These units would still only trigger major NSR review if a major modification is initiated for the unit, and the SIP mechanisms available are more effective tools to help reduce emissions than waiting for a unit to trigger major NSR.

Comment: Lilly supports adoption of the federal clean unit applicability test. (ELC)

Response: IDEM proposes to adopt the clean unit designation process with some modifications to the federal provisions for the reasons described in the previous and subsequent responses.

Fees

Comment: Lilly agrees that IDEM should have authority to establish a separate permit review fee for Clean Unit Designations. If the emission unit has not undergone a BACT or LAER review, a fee similar to that currently assessed for technology reviews in NSR permits would be appropriate since the activity is technically similar. If the emission unit has undergone a BACT or LAER review, the permit fee should be significantly lower. (ELC)

Response: IDEM appreciates the support and is recommending a fee identical to the BACT or LAER and air quality analysis review fees for those units that have not already gone through major NSR review. At this time, IDEM does not believe that it is necessary to charge a Part 70 permit modification fee for units that go through major NSR review; therefore, no additional fees were proposed for those types of clean unit designations.

Retroactive Clean Unit Designations

Comment: We disagree with the presumption in the Issue Paper that the purpose of the Clean Unit designation is to be an incentive to employ state of the art controls and reduce emissions. One benefit of the rule is to eliminate the resource costs and timing costs associated with NSR when effective controls are already used. This supports the concept of applying Clean Unit Designations retroactively. IDEM needs to present strong evidence that retroactive Clean Unit Designations will prevent Indiana communities from attaining the NAAQS. (ELC)

Response: IDEM concurs that one of the benefits of the clean unit designation is to eliminate resource costs and administrative burden associated with major NSR when effective controls are already used. However, IDEM believes that in exchange for reducing these burdens, it is appropriate to expect the installation of state of the art controls to reduce emissions from these units. Retroactive comparisons to a previous year's BACT is a daunting task with limited resources available to conduct exhaustive research, subject to several interpretations and disagreements, and will not result in any new air quality benefit since the controls are already installed. By having an equitable standard for a clean unit designation, IDEM is eliminating inconsistency between the two types of clean unit designations. IDEM proposes to consider controls that were installed at an earlier time as long as they meet current day BACT or LAER or went through major new source review within the previous ten years from the date that the clean unit designation process becomes effective in Indiana.

Comment: The rules should only allow Clean Unit Exemptions to be granted prospectively, and not allow past control projects to be eligible for the exemption. The rules should require an application from a source operator if the operator wishes to modify the Clean Unit. This application process would ensure that modifications do not result in increased emissions. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs that clean unit designations should only be granted prospectively, except in cases where the unit has gone through major NSR and installed BACT or LAER within the last ten years from the date the clean unit designation process becomes effective in Indiana. In these cases, since BACT or LAER level of control was installed already, it is reasonable to designate the unit as a clean unit for whatever timeframe remains out of the ten years available. Since these units went through major NSR, they are well-controlled and should be eligible for flexibility and certainty associated with the clean unit designation.

IDEM disagrees that an application should be submitted for every modification once a unit has been declared clean. In fact, this is not even the case under the current rules. IDEM proposes to include the potential to emit of the unit in the permit designating the clean unit so that the basis for the designation will be specific and clear-cut. This should also help sources and the public know whether a modification will result in increased emissions or change the potential to emit. Those modifications that result in increased emissions, or a change in the potential to emit, will cause the unit to lose clean unit status and are subject to the applicability requirements for non-clean units.

Physical and Operational Characteristics of Clean Units

Comment: We urge Indiana to avoid spelling out in regulation the "physical and operational characteristics" that cannot be altered in order to maintain a Clean Unit Designation. The variety of equipment types and emission controls used in manufacturing operations is significant, and describing the physical and operational characteristics in a general way in a regulation could easily undermine the usefulness of the Clean Unit applicability test. This is a subject that is probably better addressed once IDEM has significant experience in implementing the program. (ELC)

Response: IDEM concurs that it would be difficult to specifically identify "physical and operational characteristics" that cannot be altered in order to maintain a clean unit designation within the rule language. There are too many types of units and applications to make this feasible for rule language. IDEM proposes to require that certain physical or operational characteristics be included as conditions of the clean unit designation. Establishing these conditions clearly identifies the scope of a modification and its impact on the clean unit designation, eliminating uncertainty regarding the status of the modification. In addition, it will help prevent compliance and enforcement issues that may result when the determination of the status of a modification is made without clear criteria. IDEM believes that a limit on potential to emit will be the most important characteristic in most cases. Potential to emit is often a critical characteristic in evaluating the cost effectiveness of control technologies. Potential to emit is also directly tied to

environmental impact. A limit on potential to emit would not affect the usefulness of this applicability test with respect to efficiency improvement.

Procedure for Clean Unit Designation

Comment: IDEM requests comment on whether Clean Unit Designations could be accomplished through a combined Title V/minor NSR permit review. Lilly thinks this is appropriate and encourages such a process. This should not be difficult since Indiana's Title V rules and minor NSR rules allow for a combined review. (ELC)

Response: IDEM proposes to issue clean unit designations through the existing streamlined review processes. IDEM proposes that units that request the designation that have not gone through major NSR submit an application for a significant source modification and significant permit modification that can be completed simultaneously. IDEM proposes that units that have gone or go through major NSR receive the designation in the major NSR permit and associated Title V permit or permit modification.

Pollution Control Project Exclusion

Pollution control project exclusions are the second of the three alternate applicability scenarios available under the federal NSR changes. Prior to the federal changes, IDEM had similar exclusion provisions in 326 IAC 2-2, 2-2.5 and 2-3. Based on the comments received, pollution control project exclusions are the least controversial of the federal NSR changes. Therefore, IDEM has incorporated all of the federal requirements.

Collateral Emission Increases and Air Quality Analysis

Comment: If IDEM proceeds, the rules must not allow collateral emission increases from a project receiving a Pollution Control Project (PCP) exemption. Collateral emission increases must be prohibited, not merely minimized as suggested by IDEM's issue paper. A PCP should simply result in less emissions of all pollutants, not decreases in some and increases in others. A full environmental analysis should also be performed for all PCP applications to determine not only the air quality impacts that would result from the project, but also impacts to water and solid waste streams. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The purpose of this exemption is to encourage companies to install controls to further reduce emissions. To encourage companies to install controls, the incentive provided is to allow an increase in collateral emissions to avoid major new source review. IDEM believes that it is sometimes necessary to allow an increase in one pollutant to achieve a much greater decrease in another. For instance, a thermal oxidizer controls VOC emissions, but increases NO_x emissions. If IDEM did not allow any collateral increases in emissions, thermal oxidizers would not be available control technologies for controlling volatile organic compounds. IDEM believes that thermal oxidizers have shown a much greater reduction in volatile organic compounds and volatile organic hazardous air pollutants as compared to the increases in nitrogen oxides caused by the combustion of fuel to maintain the thermal oxidizers. Companies that use the exemption are obligated by the rule to minimize the collateral emissions. IDEM continues to have the authority to require a full air quality analysis for any project that may not be environmentally beneficial based on a collateral increase. IDEM will address projects of concern on a case-by-case basis and can deny the use of the exclusion if it is necessary for environmental protection.

Comment: We believe the currently required Air Quality Analysis should be removed or adequately defined for implementation. This requirement discourages pollution control projects simply because it adds cost. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the requirement that a pollution control project cannot cause or contribute to a violation of a National Ambient Air Quality Standards (NAAQS), PSD increment, or adversely impact an air quality related value. IDEM reserves the authority to request a full air quality analysis at any time these values could be threatened or the increase in collateral emissions is significant and the consequences to air quality are unknown. An air quality analysis would not be required for PCPs specifically listed in the rule. While IDEM does not wish to discourage pollution control projects, IDEM is responsible for protecting the air quality as well.

Verification and Public Review of PCPs

Comment: The rules must also require verification and approval by IDEM that a PCP will realize true environmental benefits. Granting of exemptions should not be automatic but should follow a thorough application and review process. Such a process should also include public notice and opportunity for public comment. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Only the listed projects known to be environmentally beneficial are granted the automatic exclusion from review. These projects have been previously evaluated by the U.S. EPA and determined to be environmentally beneficial. The listed projects are projects that IDEM is comfortable will result in an overall environmental benefit. However, IDEM is soliciting comments on whether any of these projects should be removed from the list. Since sources must notify IDEM of these projects, IDEM may request more information and thoroughly review any projects that IDEM is concerned may not result in an overall environmental benefit. Requiring verification and approval will be unnecessary in most cases and will not result in any greater environmental benefit. In addition, the review may delay or prevent a beneficial project from occurring if a source has a tight timeframe or budget to implement such an optional project. The unlisted projects are not granted an exclusion automatically, but are required to go through an application and review process with public notice and opportunity for public comment. Finally, the general requirement to operate the pollution control project properly will be an applicable requirement that must be incorporated into the source's permit and will allow IDEM to ensure that true environmental benefits are realized.

Comment: Lilly has long supported the idea of an exclusion from NSR for pollution control projects, and we continue to support it. We urge Indiana to adopt the new federal rules because they provide greater incentives for pollution control projects and impose fewer regulatory procedural requirements, yet still provide the same level of ambient air quality protection. Although we recognize that IDEM may add some value and certainty to pre-approving all pollution control projects, it is not clear that the benefit of this process exceeds the value to a company to implement its project faster. Certainly air quality will not benefit if a source cannot implement a pollution control project because it awaits an administrative approval from IDEM. (ELC)

Comment: We agree with the statements in the Pollution Control Project issue paper that most pollution control projects will not cause an air quality issue, and that IDEM has authority to request additional information and run ambient models to assure there are no NAAQS or increment violations. This philosophy mitigates the need for a full-blown air quality analysis before approving a pollution control project. (ELC)

Response: IDEM concurs and is recommending adoption of the federal pollution control project exclusion provisions.

Comment: We strongly oppose IDEM's designation of pollution control projects as significant source modifications, but strongly support U.S. EPA's approach. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the federal requirement that unlisted projects be reviewed through a process with public notice and opportunity for public and U.S. EPA comment. This process will be a significant source modification. IDEM does not propose to require the listed projects to obtain prior approval through a significant source modification.

Comment: We oppose the inclusion of pollution control projects as a minor new source review requirement, but instead support the simpler notification requirement for this category. (ICM)

Response: IDEM is recommending the adoption of the federal pollution control project exclusion provisions along with the federal requirements that listed projects go through a notification only process and that unlisted projects be reviewed through a process with public notice and opportunity for public and U.S. EPA comment.

Reporting

Comment: For units granted a PCP exemption, a reporting requirement must be implemented so that IDEM and the public can determine if the project is resulting in an air quality benefit. Such records must be available to the general public. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Sources are required to submit an annual compliance certification every year that states whether or not they are in compliance with every condition in their Title V permit. Sources that use the pollution control project exclusion will have requirements in their permit pursuant to the pollution control project exclusion provisions in the rule. One of the requirements will state that the owner or operator must operate the PCP in a manner consistent with proper practices, consistent with the environmentally beneficial analysis and air quality analysis, and in a way to minimize emissions of collateral pollutants. The source will have to certify compliance with this condition in the annual compliance certification submitted to IDEM, and this report will be available to the public. In addition, IDEM may ask for additional information from the source's records if it is necessary.

Comment: Lilly opposes requirements for sources to report their emission reductions achieved by a pollution control project. While the information is useful, it does not seem important to overall air quality protection. There is no compliance basis for this data. Such reporting raises the specter that the source has somehow violated the rules if the source does not get the level of emission reductions it thought it was going to get. The value of this information is not clear. (ELC)

Response: While IDEM agrees that reporting of emissions reductions related to the pollution control project exclusion should not be required, the annual compliance certification will require certification with the pollution control project exclusion requirements that are incorporated into a source's Title V Operating permit. Therefore, each source will have to comply with those basic requirements regarding minimizing collateral emissions and operating the control device or method properly. Proper operation of the control device or other practice will assure that emissions are reduced. IDEM also has the authority to request information on a case-by-case basis regarding a project if a specific concern arises regarding the validity of a pollution control project exclusion.

Pollution Control Project Reductions as Emission Credits

Comment: Lilly believes that sources should be able to use the emission reductions realized by implementing a pollution control project in future netting or offset transactions. Documentation of emission reductions has always been an issue in these transactions, and whether a source obtained a pollution control project exclusion along the way does not change this aspect of netting or offsets. The loss of potential netting credits or offsets can make a pollution control project much less attractive. (ELC)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the federal restrictions on what emissions reductions may be used in netting or offsets. IDEM cannot be less stringent than the federal rules and not include any restrictions on the use of emissions reductions that are otherwise used to obtain the pollution control project exclusion. The initial reductions associated with the PCP exclusion are not available for use in netting or as offsets but IDEM will allow excess reductions to be generated in accordance with the federal requirements.

Listed Projects

Comment: We strongly support the inclusion in the rule of a formal list of projects presumed to be environmentally beneficial. We

encourage IDEM to draft a procedure for adding projects to the list. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with a list of specific projects that are presumed to be environmentally beneficial. It is not necessary for IDEM to draft a procedure for adding projects to the list because IDEM does not have the authority to do so, except through rulemaking after the U.S. EPA has added the project to the list in the federal rule (refer to 67 FR 80236, first column).

Plantwide Applicability Limitation (PAL)

Plantwide applicability limitations (PALs) are the third of the three alternate applicability scenarios available under the federal NSR changes. Commentors agreed that the PAL provisions should be incorporated, but commentors disagreed on the implementation of the program. IDEM agreed that the PAL provisions should be incorporated into the state rules and clarified certain aspects of the provisions to address IDEM's and commentors' concerns.

Verification of Compliance

Comment: If IDEM proceeds with a Plantwide Applicability Limit (PAL) or cap, the rules must ensure that increases in emissions are not allowed (see comments on Applicability Tests), that all units under the cap are adequately monitored, and that a PAL can be revoked if IDEM determines the sources is not complying with the cap. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The draft rule on PALs contains specific conditions on what modifications can be made without violating the PAL, extensive monitoring requirements, and provisions that allow IDEM to revoke the PAL. The source is only allowed to increase emissions above the PAL if they can demonstrate that the use of BACT equivalent controls would not be sufficient to maintain emissions below the PAL level. In this case the source will be required to go through major NSR review, including an air quality analysis, for the proposed modification and the PAL limit will be adjusted.

Declining Emissions Cap

Comment: The rules should require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. Applications and determinations for PALs should also be subject to public notice and comment procedures. (CAC) (HEC) (SDC) (STV) (VWI)

Response: U.S. EPA reviewed the concept of a declining cap and decided not to include it in the federal rules. In their studies they found that the emission cap encourages emissions reductions and pollution prevention because sources will want to leave enough emission available for future modification under the PAL. All initial PAL determinations, all PAL increases, and PAL revocations will be subject to the public review.

Comment: Lilly strongly opposes PAL permits that feature declining emission caps. If the Indiana rules were to include declining caps in PALs, few, if any sources would be interested in PALs. Sources that seek PAL permits immediately lose operating margin for increased production – often which could have taken place without triggering NSR. They accept the risk that actual emissions will never go above the emission caps – even though the source could have legally emitted at higher levels prior to operating under the PAL. Sources that seek PAL permits most likely believe they can reduce emissions and increase production – but the value of the PAL permit diminishes significantly if the target decreases over time. (ELC)

Response: IDEM is not proposing a declining cap.

Federal PAL Provisions

Comment: Lilly strongly supports the PAL provisions found in the new federal NSR rules. (ELC)

Response: IDEM proposes to incorporate the federal PAL provisions into the state program.

Availability of PALs

Comment: We do not believe Indiana should limit the availability of PAL permits to specific source categories that have been described as the best candidates for PALs. Many industries can benefit from the reduced administrative burdens and increased certainty that PAL permits provide – regardless of whether the source is part of an industry characterized by frequent changes. In addition, IDEM retains the ultimate authority over which sources obtain PAL permits. If a permit applicant fails to demonstrate to IDEM that it meets the stringent monitoring, record keeping and reporting requirements described in the PAL rules, then IDEM should not issue a PAL permit. (ELC)

Response: Any major source who can demonstrate an ability to comply with the PAL program may submit an application for a PAL permit. IDEM will review the compliance history and ability to operate under the PAL when determining if a PAL permit should be issued.

Fees

Comment: Lilly agrees that it may be appropriate for IDEM to establish permit fees for the initial issuance of a PAL permit. We recognize that these permits require a significant investment of time by agency staff, and the permit fees should reflect that use of resources. We recommend PAL fees based on a range of factors such as the number of emission caps employed as a simple measure of the resources involved in creating the permit. It will be very difficult for the agency to develop fees that provide a clear correlation between the level of effort to issue the permit and the amount of the fee. If a more simplistic model is used to establish fees, we urge IDEM to set the fees low enough that they will not be a deterrent to obtaining a PAL permit. This is especially important to smaller companies that might be good candidates for a PAL, but might opt not to pursue a PAL due to high fees. (ELC)

Response: IDEM has drafted language in this Second Notice that includes a fee program for PAL permits in 326 IAC 2-1.1-7. IDEM is especially interested in receiving comments on the best way to establish this fee.

Documenting Baseline Actual Emissions

Comment: We strongly support an implementable program for PALs, but encourage IDEM to consider alternatives to stack testing for documenting eligibility for the PAL. As currently drafted, it is cost prohibitive for small businesses to even consider utilizing a PAL. We support the use of a national database such as RBLC to document actual emissions associated with the PAL. AP-42 is frequently outdated and therefore not consistently reliable for this purpose. (ICM)

Response: The basis for determining a PAL level is the baseline actual emissions plus an amount equal to the pollutant PSD significance level. Data requirements needed to support the twenty-four (24) month period selected for the baseline actual determination will be required for the PAL determination in order to set the PAL accurately and then monitor compliance as accurately as possible. IDEM understands that the federal process for establishing a baseline is quite rigorous, but it is necessary in exchange for the flexibility provided by the PAL. IDEM must adopt rules at least as stringent as the federal rules. Therefore, IDEM is proposing to adopt the federal PAL as promulgated.

Comment: IDEM should take advantage of this discussion opportunity to move toward use of a more practical testing approach such as eliminating condensables from tests where emissions units operate near or at ambient temperature. (ICM)

Response: This rulemaking is intended to amend the state air permit rules in response to the amendments to the federal NSR amendments. Changes to the testing requirements are outside the scope of this rulemaking.

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:

#03-67(APCB) NSR Reform

Christine Pedersen

c/o Administrative Assistant

Rules Development Section

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.

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, faxed, or hand delivered by October 1, 2003.

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 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 2-1.1-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-7 Fees

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-8

Affected: IC 13-15; IC 13-16-2; IC 13-17

Sec. 7. The applicant shall pay a fee based upon the cost to the commissioner of processing and reviewing the applicable registration, permit, or operating permit revision application and the cost of determining compliance with the terms and conditions of a permit. Except for sources identified in subdivision (5)(A), (5)(B), or (5)(E), sources subject to 326 IAC 2-7-19 are exempt from the fees established by subdivisions (1) and (4) through (6). Sources that have received a permit pursuant to 326 IAC 2-8 are exempt from the fees established by subdivisions (1) and (4) through (6), except to the extent provided in 326 IAC 2-8-16. Sources subject to 326 IAC 2-9 are exempt from the fees established by subdivision (1). The fees are established as follows:

(1) A basic filing fee of one hundred dollars (\$100) shall be submitted with any application submitted to the commissioner for

review in accordance with this article.

(2) A fee of five hundred dollars (\$500) shall be submitted upon billing for:

(A) a registration under 326 IAC 2-5.1-2;

(B) a minor permit revision under 326 IAC 2-6.1-6(g) or 326 IAC 2-8-11.1(d); or

(C) a modification under 326 IAC 2-7-10.5(d).

(3) At the time the notice of a proposed permit, modification approval, or permit revision is published under 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-8-11.1(f), or a modification under 326 IAC 2-7-10.5(f), permit or significant permit revision fees shall be assessed as follows:

(A) A construction permit, modification approval, or significant permit revision approval fee of three thousand five hundred dollars (\$3,500) shall be submitted upon billing for those sources subject to 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-7-10.5(f), or 326 IAC 2-8-11.1(f). The fee assessed under subdivision (1) shall be credited toward this fee.

(B) A construction permit fee of six thousand dollars (\$6,000) shall be submitted upon billing for those applications requiring review for PSD requirements under 326 IAC 2-2 or emission offset under 326 IAC 2-3. The fees assessed under subdivision (1) and clause (A) shall be credited toward this fee.

(C) Air quality analyses fees shall be assessed as follows:

(i) A fee of three thousand five hundred dollars (\$3,500) shall be submitted upon billing if an air quality analysis is required under 326 IAC 2-2-4 or 326 IAC 2-3-3.

(ii) In lieu of the fee under item (i), a fee of six thousand dollars (\$6,000) shall be submitted upon billing for an air quality analysis per pollutant performed by the commissioner upon request of the source owner or operator. The commissioner may deny a request to perform an air quality analysis.

(D) Fees for control technology analyses for best available control technology (BACT) under 326 IAC 2-2-3, ~~or~~ lowest achievable emission rate (LAER) under 326 IAC 2-3-3, **or comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2** shall be assessed as follows per emissions unit or group of identical emissions units for which a control technology analysis is required:

(i) A fee of three thousand dollars (\$3,000) shall be submitted upon billing if two (2) to five (5) control technology analyses are required.

(ii) A fee of six thousand dollars (\$6,000) shall be submitted upon billing if six (6) to ten (10) control technology analyses are required.

(iii) A fee of ten thousand dollars (\$10,000) shall be submitted upon billing if more than ten (10) control technology analyses are required.

(E) Miscellaneous fees to cover technical and administrative costs shall be assessed as follows:

(i) A fee of five hundred dollars (\$500) shall be submitted upon billing for each review for an applicable national emission standard for hazardous air pollutants under 326 IAC 14 or 326 IAC 20 or an applicable new source performance standard under 326 IAC 12.

(ii) A fee of five hundred dollars (\$500) shall be submitted upon billing for each public hearing conducted prior to issuance of the permit or modification approval.

(iii) A fee of six hundred dollars (\$600) shall be submitted upon billing for each control technology analysis for BACT for volatile organic compounds under 326 IAC 8-1-6 and for maximum achievable control technology under 326 IAC 2-4.1.

(F) Fees for establishing a plantwide applicability limitation (PAL) in a PAL permit shall be assessed as follows:

(i) A separate fee shall be assessed for each pollutant.

(ii) The fee for each PAL pollutant shall be assessed at forty dollars (\$40) per ton of the allowable emissions for that PAL pollutant.

(iii) The fee for any individual PAL pollutant shall not exceed forty thousand dollars (\$40,000).

(4) Annual operating permit fees shall be assessed as follows:

(A) A basic permit fee of two hundred dollars (\$200) shall be submitted upon billing for each operating permit required under 326 IAC 2-6.1.

(B) A fee of six hundred dollars (\$600) shall be submitted upon billing for each source with a potential to emit greater than five (5) tons per year of lead.

(C) A fee of one hundred dollars (\$100) shall be submitted upon billing for a relocation approval for a portable source.

(5) In lieu of fees assessed under subdivision (4), annual operating permit fees shall be assessed for identified source categories as follows:

(A) During the years 1995 through 1999 inclusive, a fee of fifty thousand dollars (\$50,000), less any amount credited under this clause, shall be charged to an electric power plant for a Phase I affected unit, as identified in Table A of Section 404 of the CAA, or for a substitution unit as determined by the U.S. EPA in accordance with Section 404 of the CAA. Any fees paid by that plant for non-Phase I units under 326 IAC 2-7-19 shall be credited toward this fee. Prior to 1995, a fee of three thousand dollars

(\$3,000) shall be submitted upon billing by the sources described in this clause. The existence of a Phase I unit at an electric power plant does not affect the plant's duty to pay fees for non-Phase I units at the plant.

(B) A fee for each coke plant equal to the costs to the commissioner associated with conducting the surveillance activities required to determine compliance with 40 CFR **Part** 63, Subpart L* shall be submitted upon billing. Any fee collected under this clause shall not exceed one hundred twenty-five thousand dollars (\$125,000).

(C) A fee of six hundred dollars (\$600) shall be submitted upon billing for each surface coal mining operation per mining area or pit.

(D) A fee of two hundred dollars (\$200) shall be submitted upon billing for each grain terminal elevator as defined in 326 IAC 1-2-33.2.

(E) A fee of twenty-five thousand dollars (\$25,000) shall be submitted upon billing for a municipal solid waste incinerator with capacity greater than two hundred fifty (250) tons per day.

(6) In addition to the fees assessed under subdivisions (1) through (5), miscellaneous fees to cover technical and administrative costs shall be assessed to sources subject to this section except for sources subject to fees established in subdivision (5)(A), (5)(B), or (5)(E) as follows:

(A) A fee of one thousand four hundred dollars (\$1,400) shall be submitted upon billing for any air quality network required by permit.

(B) A fee of seven hundred dollars (\$700) shall be paid for review under 326 IAC 3 of any source sampling test required by permit, per emissions unit. This fee shall be paid upon submittal of a protocol for the stack test as required by 326 IAC 3.

(C) A fee of two hundred dollars (\$200) shall be submitted upon billing for each opacity or pollutant continuous emission monitor required by permit.

(7) Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to "Cashier, Indiana Department of Environmental Management" no later than thirty (30) days after receipt of billing. Nonpayment may result in denial of a permit application or revocation of the permit.

(8) If an annual fee is being paid under a fee payment schedule established under IC 13-16-2, the fee shall be paid in accordance with that schedule. Establishment of a fee payment schedule must be consistent with IC 13-16-2, including the determination that a single payment of the entire fee is an undue hardship on the person and that the commissioner is not required to assess installments separately. Failure to pay in accordance with the fee payment schedule that results in substantial nonpayment of the fee may result in revocation of the permit.

(9) Fees are nonrefundable. If the permit is denied or revoked or the source or emissions unit is shut down, the fees shall neither be refunded nor applied to any subsequent application or reapplication.

(10) If a permit becomes lost or damaged, a replacement may be requested.

(11) The commissioner may adjust all fees on January 1 of each calendar year by the Consumer Price Index (CPI) using revision of the CPI that is most consistent with the CPI for the calendar year 1995.

*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 2-1.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 991; filed May 21, 2002, 10:20 a.m.: 25 IR 3057*)

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

326 IAC 2-2-1 Definitions

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit other than an electric utility steam generating unit described in subdivision (4), which **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation; information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.

(4) This definition shall not apply for calculating a significant emissions increase under section 2(d) of this rule or for establishing a PAL under 326 IAC 2-2.4. Instead, subsections (e) and (rr) shall apply for those purposes.

(c) “Adverse impact on visibility” means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor’s visual experience of the federal Class I area as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

- (1) times of visitor use of the federal Class I area; and
- (2) the frequency and timing of natural conditions that reduce visibility.

(d) “Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless a source is subject to enforceable permit limits **which that** restrict the operating rate or hours of operation, or both) and the most stringent of:

- (1) the applicable standards as set forth in 40 CFR **Part 60*** and 40 CFR **Part 61***;
- (2) the state implementation plan emissions limitation, including those with a future compliance date; or
- (3) the emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(e) “Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

(1) For any existing electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit other than an electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required by this rule, except that the ten (10) year period shall not include any period earlier than November 15, 1990.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month

period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the department has applied the emissions reductions to an attainment demonstration or maintenance plan consistent with the requirements of 326 IAC 2-3-3(b)(14).

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0), and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated as follows:

(A) For an existing electric utility steam generating unit, in accordance with subdivision (1).

(B) For an existing emissions unit except an existing electric utility steam generating unit, in accordance with subdivision (2).

(C) For a new emissions unit, in accordance with subdivision (3).

(f) "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu\text{g}/\text{m}^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1)(D) or 107(d)(1)(E) of the Clean Air Act (CAA) cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR Part 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that ~~such~~ the baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR Part 52.21(b)(14)(iv)*.

(g) "Baseline concentration" means that ambient concentration level ~~which that~~ exists in the baseline area at the time of the applicable minor source baseline date. ~~The~~ A baseline concentration is determined for each pollutant for which a **minor source** baseline date is established and shall include the following:

(1) The actual emissions, **as defined in this section**, representative of sources in existence on the applicable minor source baseline date except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources ~~which that~~ commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable ~~increase(s)~~:
increase or increases:

(A) Actual emissions, **as defined in this section**, from any major stationary source on which ~~the~~ construction commenced after the major source baseline date.

(B) Actual emissions increases and decreases, **as defined in this section**, at any stationary source occurring after the minor source baseline date.

(h) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to:

(1) installation of building supports and foundations;

(2) laying underground pipework; and

(3) construction of permanent storage structures.

With respect to a change in method of operations, ~~this~~ **the** term refers to those on-site activities other than preparatory activities ~~which~~ **that** mark the initiation of the change.

~~(h)~~ **(i)** “Best available control technology” or “BACT” means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA, which~~ **that** would be emitted from any proposed major stationary source or major modification, ~~which that~~ the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such the~~ source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such the~~ pollutant. In no event shall application of best available control technology result in emissions of any pollutant ~~which that~~ would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard not feasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirements for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such the~~ design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

~~(i)~~ **(j)** “Building, structure, facility, or installation” means all of the pollutant-emitting activities ~~which that~~ belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “major group”, ~~(i.e., for example,~~ which have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office)*.

~~(j)~~ **(k)** “Clean coal technology” means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(k)~~ **(l)** “Clean coal technology demonstration project” means a project using funds appropriated under the heading “Department of Energy–Clean Coal Technology”, up to a total amount of two billion five hundred million dollars (\$2,500,000,000) for commercial demonstration of clean coal technology or similar projects funded through appropriations for U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(m) “Clean unit” means an emissions unit that meets one (1) of the following:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-2.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-2.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(l)~~ **(n)** “Commence”, as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(m)~~ **(o)** “Complete” means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

~~(n)~~ **(p)** “Construction” means any physical change or change in the method of operation, including fabrication, erection,

installation, demolition, or modification of an emissions unit, ~~which that~~ would result in a change in ~~actual~~ emissions.

(q) “Continuous emissions monitoring system” or “CEMS” means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to:

- (1) sample;**
 - (2) condition, if applicable;**
 - (3) analyze; and**
 - (4) provide a record of;**
- emissions on a continuous basis.**

(r) “Continuous emissions rate monitoring system” or “CERMS” means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(s) “Continuous parameter monitoring system” or “CPMS” means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

- (1) monitor:**
 - (A) process and control device operational parameters; and**
 - (B) other information, such as gas flow rate, O₂ or CO₂ concentrations; and**
- (2) record the average operational parameter value on a continuous basis.**

(t) “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(u) “Emissions unit” means any part of a stationary source ~~which that~~ emits or would have the potential to emit any regulated NSR pollutant. ~~regulated under the provisions of the CAA.~~ For purposes of this rule, there are two (2) types of emissions units as follows:

- (1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.**
- (2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1).**

(v) “Federal land manager” means, with respect to any lands in the United States, the secretary of the department with authority over ~~such the~~ lands.

(w) “Federally enforceable” means all limitations and conditions which are enforceable by the U.S. EPA, including:

- (1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;**
- (2) requirements within the state implementation plan; and**
- (3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.**

(x) “Fugitive emissions” means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(y) “High terrain” means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

(z) “Indian governing body” means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(aa) “Indian reservation” means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(bb) “Innovative control technology” means any system of air pollution control that has not been adequately demonstrated in

practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(cc) “Lowest achievable emission rate” or “LAER” means, for any source, the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation that is contained in the state implementation plan for the class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

(2) The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(w) (dd) “Low terrain” means any area other than high terrain.

(x) (ee) “Major modification” means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any a regulated NSR pollutant that is being regulated under the CAA and a significant net emissions increase of that pollutant from the major stationary source. The following shall apply:

(1) Any net significant emissions increase that is significant for volatile organic compounds from any emissions units, or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(C) Use of an alternative fuel by reason of an order under Section 125 of the CAA.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source ~~which that:~~ that:

(i) the source was capable of accommodating before January 6, 1975, unless ~~such the~~ change would be prohibited under any enforceable permit condition ~~which that~~ was established after January 6, 1975, pursuant to 40 CFR Part 52.21* or under this rule or 326 IAC 2-3; or

(ii) the source is approved to use under any permit issued under 40 CFR Part 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such the~~ change would be prohibited under any enforceable permit condition ~~which that~~ was established after January 6, 1975, pursuant to 40 CFR Part 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project as defined in subsection (dd) at an existing electric steam generating emissions unit unless:

(i) the commissioner and U.S. EPA determine that such addition, replacement, or use renders the unit less environmentally beneficial; or

(ii) the commissioner determines that the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.

~~A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9): meeting the requirements of 326 IAC 2-2.3. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.~~

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

(ff) “Major source baseline date” means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(2) In the case of nitrogen dioxide, February 8, 1988.

~~(y)~~ **(gg) “Major stationary source” means the following:**

(1) Any of the following stationary sources of air pollutants ~~which that~~ are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and ~~which that~~ emit or have the potential to emit one hundred (100) tons per year or more of any **regulated NSR pollutant: subject to regulation under the CAA:**

(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(B) Coal cleaning plants (with thermal driers).

(C) Kraft pulp mills.

(D) Portland cement plants.

(E) Primary zinc smelters.

(F) Iron and steel mill plants.

(G) Primary aluminum ore reduction plants.

(H) Primary copper smelters.

(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.

(J) Hydrofluoric, sulfuric, and nitric acid plants.

(K) Petroleum refineries.

(L) Lime plants.

(M) Phosphate rock processing plants.

(N) Coke oven batteries.

(O) Sulfur recovery plants.

(P) Carbon black plants (furnace process).

(Q) Primary lead smelters.

(R) Fuel conversion plants.

(S) Sintering plants.

(T) Secondary metal production plants.

(U) Chemical process plants.

(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(W) Taconite ore processing plants.

(X) Glass fiber processing plants.

(Y) Charcoal production plants.

(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.

(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of ~~any air a~~ **regulated NSR pollutant. subject to regulation under the CAA:**

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelters.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) and this subdivision if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).

(6) Notwithstanding subdivisions (1) through (5), a source or modification of a source shall not be considered a major stationary

source if it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and ~~such the~~ source does not belong to any of the categories listed in subdivision (1) or any other stationary source category ~~which, that~~, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 42 U.S.C. 7412).

(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(z)~~ **“Major source baseline date” means the following:**

~~(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.~~

~~(2) In the case of nitrogen dioxide, February 8, 1988.~~

~~(aa)~~ **(hh)** **“Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR Part 52.21* submits a complete application under the relevant regulations, including the following:**

(1) The trigger date is the following:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.

(B) In the case of nitrogen dioxide, February 8, 1988.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the commissioner may rescind a minor source baseline date where it can be shown, to the satisfaction of the commissioner, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

~~(bb)~~ **(ii)** **“Necessary preconstruction approvals or permits” means those permits or approvals required under federal air quality control laws and regulations and air quality control laws and regulations that are part of the state implementation plan.**

~~(cc)~~ **(jj)** **“Net emissions increase” with reference to a significant net emissions increase, means, the tons per year amount by which the sum of the following exceeds zero (0) with respect to any regulated NSR pollutant emitted by a major stationary source, the following:**

(1) ~~Any~~ **The amount by which the sum of the following exceeds zero (0):**

(A) ~~The increase in actual~~ emissions from a particular physical change or change in the method of operation at a **stationary source as calculated under section 2(d) of this rule.**

~~(2)~~ **(B)** Any other increases and decreases in actual emissions at the **major stationary** source that are contemporaneous with the particular change and are otherwise creditable. ~~as follows:~~ **Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (e), except that subsection (e)(1)(C) and (e)(2)(D) shall not apply.**

~~(A)~~ **(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between **the date:**

~~(i)~~ **(A)** ~~the date~~ five (5) years before construction on the particular change commences; and

~~(ii)~~ **(B)** ~~the date~~ that the increase from the particular change occurs.

~~(B)~~ **(3)** An increase or decrease in actual emissions is creditable only if:

(A) the increase or decrease in actual emissions occurs within a reasonable period as determined by the department;

(B) the department has not relied on the increase or decrease in actual emissions in issuing a permit for to the source under 40 CFR Part 52.21* or this rule and the permit is in effect when the increase in actual emissions from the particular change occurs; and

(C) the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-2.2-1(i) and 326 IAC 2-2.2-2(j).

~~(C)~~ **(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides ~~which that~~ occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. ~~With respect to particulate matter, only PM₁₀ emissions shall be used to~~

evaluate the net emissions increase for PM_{10} .

(D) (5) An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

(E) (6) A decrease in actual emissions is creditable only to the extent that:

(i) (A) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) (B) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(iii) (C) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(D) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emission reductions that were not relied upon in a PCP excluded under 326 IAC 2-2.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-2.3-1(g)(4) for the PCP and 326 IAC 2-2.2-1(i) and 326 IAC 2-2.2-2(j) for a clean unit.

(F) (7) An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(8) Subsection (b)(1) shall not apply for determining creditable increases and decreases.

(kk) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(dd) (ll) "Pollution control project" or "PCP" means for purposes of this rule, any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to the following:

(1) The installation of conventional or innovative pollution control technology, including, but not limited to, advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls, and electrostatic precipitators.

(2) An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to:

(A) natural gas or coal reburning; or

(B) the cofiring of natural gas and other fuels for the purpose of controlling emissions.

(3) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*, or subsequent appropriations, up to a total amount of two billion five hundred million dollars (\$2,500,000,000), for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA.

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

any activity, set of work practices, or project, including pollution prevention undertaken at an existing emissions unit, that reduces emissions of air pollutants from the unit. The qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. 2-2.3-1(c)(1). Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-2.3-1(c) and 326 IAC 2-2.3-1(f). The following projects are presumed to be environmentally beneficial under 326 IAC 2-2.3-1(c)(1):

(1) Conventional or advanced flue gas desulfurization or sorbent injection for control of sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(3) Flue gas recirculation, low-NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion engines, and oxidation/absorption catalyst for control of nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more

than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel to be limited to the following fuel switches:

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of “unclean” wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(mm) “Pollution prevention” means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal, through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain “in-process recycling” practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

(nn) “Potential to emit” means the maximum capacity of a source or major modification to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(oo) “Predictive emissions monitoring system” or “PEMS” means all of the equipment necessary to, on a continuous basis:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as, gas flow rate, O₂ or CO₂ concentrations; and

(2) calculate and record the mass emissions rate, such as pounds per hour.

(pp) “Prevention of significant deterioration program” or “PSD program” means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the requirements of 40 CFR Part 51.166* or the program in 40 CFR Part 52.21*. Any permit issued under the program is a major NSR permit.

(qq) “Project” means a physical change in, or change in the method of operation of, an existing major stationary source.

(rr) “Projected actual emissions” means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under this subsection, before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company’s own representations;

(CC) the company’s expected business activity and the company’s highest projections of business activity;

(DD) the company’s filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved state implementation plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (e) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit’s potential to emit, in tons per year, as defined under subsection (nn).

(ff) (ss) “Reactivation of a very clean coal-fired electric utility steam generating unit” means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the CAA Amendments of 1990, and the emissions from such the unit continue to be carried in the department’s emissions inventory at the time of enactment;

(2) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

(tt) “Reasonably available control technology” or “RACT”, for purposes of this rule, means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(1) the necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;

(2) the social, environmental, and economic impact of the controls; and

(3) alternative means of providing for attainment and maintenance of the standard.

(uu) “Regulated NSR pollutant”, for purposes of this rule, means any of the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the pollutants identified by the U.S. EPA.

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA.

(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the CAA.

(4) Any pollutant that otherwise is subject to regulation under the CAA, except that any or all hazardous air pollutants either listed in Section 112 of the CAA or added to the list pursuant to Section 112(b)(2) of the CAA, which have not been delisted pursuant to Section 112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the CAA.

(5) Notwithstanding subdivision (4), any pollutant listed in subsection (xx).

(gg) (vv) “Repowering” means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

- (3) Magnetohydrodynamics.
- (4) Direct and indirect coal-fired turbines.
- (5) Integrated gasification fuel cells.
- (6) As determined by U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

Repowering **The term** shall also include any oil or gas-fired unit, or both, that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the CAA.

(hh) “Representative actual annual emissions” means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations); considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:

(1) Consider all relevant information, including, but not limited to, the following:

- (A) Historical operational data.
- (B) The company’s own representations.
- (C) Filings with Indiana or federal regulatory authorities.
- (D) Compliance plans under Title IV of the CAA.

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit’s emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(ii) (ww) “Secondary emissions” means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the source or modification **which that** causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

- (1) the tailpipe of a motor vehicle;
- (2) a train; or
- (3) a vessel.

(jj) (xx) “Significant” means the following:

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- (A) Carbon monoxide: one hundred (100) tons per year.
- (B) Nitrogen oxides: forty (40) tons per year.
- (C) Sulfur dioxide: forty (40) tons per year.
- (D) Particulate matter: twenty-five (25) tons per year.
- (E) PM₁₀: fifteen (15) tons per year.
- (F) Ozone: forty (40) tons per year of volatile organic compounds.
- (G) Lead: six-tenths (0.6) ton per year.
- (H) Asbestos: seven one-thousandths (0.007) ton per year.
- (I) Beryllium: four ten-thousandths (0.0004) ton per year.
- (J) Mercury: one-tenth (0.1) ton per year.
- (K) Vinyl chloride: one (1) ton per year.
- (L) Fluorides: three (3) tons per year.
- (M) Sulfuric acid mist: seven (7) tons per year.
- (N) Hydrogen sulfide (H₂S): ten (10) tons per year.

- (O) Total reduced sulfur (including H₂S): ten (10) tons per year.
- (P) Reduced sulfur compounds (including H₂S): ten (10) tons per year.
- (Q) Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.
- (R) Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.
- (S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.
- (T) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.
- (U) Ozone-depleting substances (ODS): one hundred (100) tons per year.
- (V) Any **regulated NSR** pollutant ~~subject to regulation under the CAA~~, other than the pollutants listed in this subsection: ~~or under Section 112(b) of the CAA*~~: any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on ~~such~~ the area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(yy) “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in subsection (xx), for that pollutant.

~~(zz)~~ **(zz)** “Stationary source” means any building, structure, facility, or installation that emits or may emit ~~any air a regulated NSR pollutant. subject to regulation under the CAA~~: A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

- ~~(aaa)~~ **(aaa)** “Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that:
- (1) is operated for a period of five (5) years or less; and
 - (2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*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 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557*)

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

326 IAC 2-2-2 Applicability

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

Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 2. **(a) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source except as this rule otherwise provides.**

~~(a)~~ **(b) The requirements of this rule shall apply to the construction of any new major stationary source or any project at an existing major modification, as defined in section 1 of this rule, that is being constructed or will be constructed stationary source in an area designated as of the submittal date of a complete application in accordance with 326 IAC 2-5-1, as attainment or unclassifiable in 326 IAC 1-4, under sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the CAA.**

~~(b)~~ **(b) The owner or operator of a major stationary source or major modification shall not begin actual construction unless the requirements in sections 3 through 8, 10, and 14 through 16 of this rule have been met and a permit has been issued under this rule.**

(c) No new major stationary source or major modification to which the requirements of sections 3, 4, 5, 7, 8(a), 10, 14, and 15 apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(d) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (e) and (f), and consistent with the definition of major modification contained in section 1(ee) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified as provided in subdivisions (3) through (6). The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(jj) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is projected to occur.

(6) For a hybrid test for projects that involve multiple types of emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(e) For any major stationary source for which a PAL has been established for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 326 IAC 2-2.4.

(f) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-2.3.

~~(g)~~ **(g) Sources that are located in or proposed to be located in an area designated as nonattainment pursuant to under 326 IAC 1-4 for a pollutant shall be exempt from the requirements of this rule for that particular pollutant and subject to 326 IAC 2-3.**

~~(h)~~ **(h) A source or modification of a source that is or would be a nonprofit health or nonprofit educational institution shall be exempt from the requirements of sections 3, 4, and 7 of this rule.**

~~(i)~~ **(e) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as otherwise provided in this rule:**

~~(j)~~ **(i) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule do not apply to a particular major stationary source or major modification if the source or modification is a portable stationary source that has previously received a permit under 326 IAC 2-5.1-3 or 326 IAC 2-7 and the permit contains conditions from 40 CFR Part 52.21* or this rule if:**

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

(3) emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;
and

(4) ten (10) days advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.

*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 2-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Jan 6, 1989, 3:30 p.m.: 12*

IR 1098; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)

SECTION 4. 326 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-3 Control technology review; requirements

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

Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 3. Any owner or operator of a major stationary source or major modification shall comply with the following requirements:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Part 60* and 40 CFR Part 61*.

(2) A new, major stationary source shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the source has the potential to emit in significant amounts as defined in section 1 of this rule.

(3) A major modification shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the modification would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase of the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time, which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. ~~At such this~~ time, the owner or operator of the applicable source may be required to demonstrate the adequacy of any previous determination of best available control technology for that source.

*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 2-2-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 5. 326 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-4 Air quality analysis; requirements

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

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any application for a permit under the provisions of this rule **or for a clean unit designation** shall contain an analysis of ambient air quality in the area that the major stationary source, ~~or~~ major modification, **or clean unit** would affect for each of the following pollutants:

(1) For a source, each pollutant regulated under the provisions of the CAA that the source would have the potential to emit in a significant amount.

(2) For a modification, each pollutant regulated under the provision of the CAA for which the modification would result in a significant net emissions increase.

(3) For a clean unit designation, each pollutant emitted by the unit for which the owner or operator requests the department to designate the unit as a clean unit.

(b) Exemptions are as follows:

(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification would:

(A) impact no Class I area and no area where an applicable increment is known to be violated; and

(B) be temporary.

(2) A source or modification shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emissions increase of the pollutant from a new source or the net emissions increase of the pollutant from a modification

would cause, in any area, air quality impacts less than:

Carbon Monoxide	575 $\mu\text{g}/\text{m}^3$, 8-hour average;
Nitrogen Dioxide	14 $\mu\text{g}/\text{m}^3$, annual average;
PM ₁₀	10 $\mu\text{g}/\text{m}^3$, 24-hour average;
Sulfur Dioxide	13 $\mu\text{g}/\text{m}^3$, 24-hour average;
Ozone	No de minimis air quality level is provided for ozone; however, any net increase of one hundred (100) tons per year or more of volatile organic compounds subject to PSD would be required to provide ozone ambient air quality data;
Lead	0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
Mercury	0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
Beryllium	0.001 $\mu\text{g}/\text{m}^3$, 24-hour average;
Fluorides	0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
Vinyl Chloride	15 $\mu\text{g}/\text{m}^3$, 24-hour average;
Total Reduced Sulfur	10 mg/m ³ , 1-hour average;
Hydrogen Sulfide	0.2 $\mu\text{g}/\text{m}^3$, 1-hour average;
Reduced Sulfur Compounds	10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

(B) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in clause (A) or the pollutant is not listed in clause (A).

(c) All monitoring required by this section shall be done in accordance with the following provisions:

(1) With respect to any pollutant for which no ambient air quality standard designated in 326 IAC 1-3 exists, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(2) With respect to any pollutant (other than nonmethane hydrocarbons) for which an ambient air quality standard as designated in 326 IAC 1-3 does exist, the analysis shall contain continuous air quality monitoring data gathered for the purpose of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(3) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year preceding receipt of the application, except that, if the commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(4) The owner or operator of the proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV* may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

(5) The owner or operator of a major stationary source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect of the emissions ~~which that~~ the source or modification may have, or are having, on air quality in any area.

(6) The owner or operator of a major stationary source or major modification shall comply with the requirements of 40 CFR Part 58, Appendix B* during operation of monitoring stations for purposes of complying with this section.

(7) All air quality monitoring shall be done in accordance with state and federal monitoring procedures as set forth in the following references: May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007)* and the May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual*".

*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 2-2-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2396; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3026; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1099; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2420; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1565*)

SECTION 6. 326 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-5 Air quality impact; requirements

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

Affected: IC 13-15; IC 13-17

Sec. 5. (a) The owner or operator of the proposed major stationary source, ~~or~~ major modification, **or the owner or operator that requests a clean unit designation** shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of **any**:

- (1) ~~any~~ ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or
- (2) ~~any~~ applicable maximum allowable increase over the baseline concentration in any area.

(b) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the new source or the net emissions increase of that pollutant from the modification would:

- (1) impact no Class I area and no area where an applicable increment is known to be violated; and
- (2) be temporary.

(c) The requirements of this section do not apply to a major stationary source or major modification with respect to total suspended particulate matter.

(d) Air quality impact analysis required by this section shall be conducted in accordance with the following provisions:

- (1) Any estimates of ambient air concentrations used in the demonstration processes required by this section shall be based upon the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models)*.
- (2) Where an air quality impact model specified in the guidelines cited in subdivision (1) is inappropriate, a model may be modified or another model substituted provided that all applicable guidelines are satisfied.
- (3) Modifications or substitution of any model may only be done in accordance with guideline documents and with written approval from U.S. EPA and shall be subject to public comment procedures set forth in 326 IAC 2-1.1-6.

*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 2-2-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2024; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1566*)

SECTION 7. 326 IAC 2-2-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements

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

Affected: IC 13-12

Sec. 6. (a) Any demonstration ~~pursuant to~~ **under** section 5 of this rule ~~should~~ **or 326 IAC 2-2-2(c)(2) shall** demonstrate that increased emissions caused by the proposed major stationary source, ~~or~~ major modification, **or clean unit** will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). Available maximum allowable increases are determined by adjusting the MAI to include impacts from **actual emissions**:

- (1) **actual emissions** from any major stationary source or major modification on which construction commenced after the major source baseline date; and
- (2) **actual emissions** increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

(b) Increment consumption shall be in accordance with the following:

- (1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the CAA). Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR Part 52.21* **to which it** must be adhered. ~~to~~ New permits issued after January 1, 1995, shall use PM₁₀ as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, µg/m ³ Limits)
(A) Particulate Matter:	
(PM ₁₀):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources ~~which that~~ have converted from the use of petroleum products ~~or~~ natural gas, or both, by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources ~~which that~~ have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by state implementation plan revisions approved by U.S. EPA are excluded provided the following criteria is met:

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner and the U.S. EPA.

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase ~~which that~~ would impact a Class I area or an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) ~~which that~~ will ensure that the emissions levels will not exceed those levels occurring from such source before the exclusion was granted.

(5) No exclusion of such a concentration ~~pursuant to~~ **under** subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted ~~pursuant to~~ **under** this rule, whichever is later. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

*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 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567*)

SECTION 8. 326 IAC 2-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-7 Additional analysis; requirements

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

Affected: IC 13-15; IC 13-17

Sec. 7. (a) The owner or operator shall provide an analysis of the following:

(1) Impairment to visibility, soils, and vegetation that would occur as a result of the major stationary source, ~~or~~ major modification, **or clean unit designation** and general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit**. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit designation**.

(b) The requirements of this section shall not apply to a major stationary source or major modification as defined in section 1 of this rule, with respect to a particular pollutant, if the allowable emissions of that pollutant from the source or the net emissions increase of the pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

(Air Pollution Control Board; 326 IAC 2-2-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2399; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568)

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

326 IAC 2-2-8 Source obligation

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

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The following shall apply to any owner or operator who proposes to construct, constructs, or operates a major stationary source or major modification subject to this rule:

(1) Approval to construct, ~~pursuant to~~ **under** section 2(b) of this rule, shall become invalid if construction is not commenced within eighteen (18) months after receipt of ~~such the~~ approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(2) Approval for construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

(3) At ~~such the~~ time ~~as~~ a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(b) **The following provisions apply to projects at an existing emissions unit at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(rr)(2)(A) of this rule for calculating projected actual emissions:**

(1) **Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:**

(A) **A description of the project.**

(B) **Identification of any emissions unit whose emissions of a regulated NSR pollutant could be affected by the project.**

(C) **A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:**

(i) **the baseline actual emissions;**

(ii) **the projected actual emissions;**

(iii) **the amount of emissions excluded under section 1(rr)(2)(A)(iii) of this rule; and**

(iv) **an explanation for why the amount was excluded, and any netting calculations, if applicable.**

(2) **If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.**

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1) exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount, as defined in section 1(xx) of this rule, for that regulated NSR pollutant and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.

(c) The owner or operator of the source shall make the information required to be documented and maintained under subsection (b) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 326 IAC 17.1. (Air Pollution Control Board; 326 IAC 2-2-8; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2400; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424)

SECTION 10. 326 IAC 2-2-10 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-10 Source information

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

Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 10. The owner or operator of a proposed major stationary source, ~~or~~ major modification, **or an owner or operator that requests a clean unit designation** shall submit all information necessary to perform any analysis or make any determination required under this rule **or under the clean unit designation requirements** as follows:

(1) With respect to a source or modification to which this rule applies, such information shall include:

(A) a description of the nature, location, design capacity, and typical operating schedule of the major stationary source or major modification, including specifications and drawings showing its design and plant layout;

(B) a detailed schedule for construction of the major stationary source or major modification; and

(C) a detailed description as to what system of continuous emission reduction is planned for the major stationary source or major modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the commissioner, the owner or operator shall also provide information on **the air quality impact:**

(A) ~~the air quality impact~~ of the major stationary source or major modification, including meteorological and topographical data necessary to estimate such impact; and

(B) ~~the air quality impact~~ and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area that the major stationary source or major modification would affect.

(Air Pollution Control Board; 326 IAC 2-2-10; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425)

SECTION 11. 326 IAC 2-2.2 IS ADDED TO READ AS FOLLOWS:

Rule 2.2. Clean Unit Designations

326 IAC 2-2.2-1 Clean unit designation for emission units subject to BACT or LAER

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years.

(c) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (e), and before the expiration date, as determined in accordance with subsection (f), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (g)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (g)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (d)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6) as if the emissions unit is not a clean unit.

(d) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit expires in accordance with subsection (f) or is lost under subsection (c)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under 326 IAC 2-2-1(mm) or work practices, that meets both the following requirements:

(A) The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(e) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing new control technology to meet current-day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date these provisions become effective in the state implementation plan.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(f) An emissions unit's clean unit designation expires according to the applicable provision as follows:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (d)(1) and (d)(2) or requalifies by implementing new control technology to meet current-day BACT under subsection (d)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (h).

(2) For any emissions unit that requalifies as a clean unit under subsection (d)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (h).

(g) After the effective date of the clean unit designation, and in accordance with the provisions for applying for a permit modification in 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying any pollutant for which this designation applies.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. Once the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. Once the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with BACT or LAER, and any physical or operational characteristic that formed the basis for the BACT or LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation as described in subsection (h).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (h).

(h) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The clean unit must do the following:

(1) Comply with all emission limitation and work practice requirements adopted in conjunction with the BACT or LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in subsection (g)(4).

(2) Comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) Continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(i) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(j) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. (*Air Pollution Control Board; 326 IAC 2-2.2-1*)

326 IAC 2-2.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) An owner or operator of a major stationary source has the option of using the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this section. The provisions of this section apply to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to BACT, as determined by the department in accordance with this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(4). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6) as if the emissions unit is not a clean unit.

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (3). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (4) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (4), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (4). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under 326 IAC 2-2-1(mm) or work practices, that meets both the following

requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) An emissions unit may qualify as a clean unit even if the control technology, on which the clean unit designation is based, was installed before the date that this rule became effective in the state implementation plan. However, for these emissions units, the owner or operator must apply for the clean unit designation within two (2) years after this rule is effective in the state implementation plan. For technologies installed on and after this rule became effective in the state implementation plan, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

(4) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than BACT, as defined in 326 IAC 2-2-1(i), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional BACT or LAER determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The permit must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying any pollutants for which this designation applies.

(2) The effective date of the clean unit designation. If this date is not known when the department issues the permit, then the permit must describe the event that will determine the effective date. Once the effective date is known, then the owner

or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the permit, then the permit must describe the event that will determine the expiration date. Once the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation as described in subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The restrictions are as follows:

(1) The clean unit must comply with all emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT as specified in subsection (h)(4).

(3) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(4) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementation plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emissions limit if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(c)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. (*Air Pollution Control Board; 326 IAC 2-2.2-2*)

SECTION 12. 326 IAC 2-2.3 IS ADDED TO READ AS FOLLOWS:

Rule 2.3. Pollution Control Project Exclusion Procedural Requirements

326 IAC 2-2.3-1 Pollution control project exclusion procedural requirements

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department if the project is listed in 326 IAC 2-2-1(II), or, if the project is not listed in 326 IAC 2-2-1(II), then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 and consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-2-1(II) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-2-2(d) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods shall be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-2-1(II), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-2-1(II), the project must be approved by the department in an approval under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy,

emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if the reductions are surplus, quantifiable, and permanent.

(Air Pollution Control Board; 326 IAC 2-2.3-1)

SECTION 13. 326 IAC 2-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Actuals Plantwide Applicability Limitations

326 IAC 2-2.4-1 Applicability

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions in this rule govern actuals plantwide applicability limitations (PAL). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this rule.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level meets the requirements in this rule and complies with the PAL permit:

- (1)** is not a major modification for the PAL pollutant;
- (2)** does not have to be approved through the PSD program; and
- (3)** is not subject to the provisions in 326 IAC 2-2-8(a)(3).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-1)*

326 IAC 2-2.4-2 Definitions

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-2-1 or in the CAA.

(b) “Actuals PAL”, for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) “Allowable emissions”, for the purposes of this rule, means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

(3) An emissions unit's potential to emit shall be determined using the definition in this section.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit:

- (1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or
- (2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase in 326 IAC 2-2-1, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Potential to emit" means the maximum capacity of a stationary source or major modification to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable as a practical matter. Secondary emissions do not count in determining the potential to emit of a source.

(l) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(m) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower.

*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 2-2.4-2*)

326 IAC 2-2.4-3 Permit application requirements

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

Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

- (1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
- (2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include

emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-3)

326 IAC 2-2.4-4 General requirements for establishing PALs

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

Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-4)*

326 IAC 2-2.4-5 Public participation requirements

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

Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be established, renewed, increased, terminated, or revoked through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-2.4-5)*

326 IAC 2-2.4-6 Establishing a ten year actuals PAL level

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

Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the applicable significant level for the PAL pollutant under 326 IAC 2-2-1(xx) or under the CAA, whichever is lower.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units. A different consecutive twenty-four (24)

month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. (*Air Pollution Control Board; 326 IAC 2-2.4-6*)

326 IAC 2-2.4-7 Contents of the PAL permit

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

Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

(4) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(*Air Pollution Control Board; 326 IAC 2-2.4-7*)

326 IAC 2-2.4-8 PAL effective period and reopening of the PAL permit

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

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL:

(A) to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

(B) consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source under the state implementation plan;

(C) if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD

increment violation, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-8)

326 IAC 2-2.4-9 Expiration of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e), the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. To demonstrate compliance with the allowable emission limitation, the department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if the change meets the definition of major modification in 326 IAC 2-2-1(ee).

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-2-8(a)(3), but were eliminated by the PAL in accordance with section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-9)*

326 IAC 2-2.4-10 Renewal of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with

the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subdivisions (1) and (2). However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first.

(Air Pollution Control Board; 326 IAC 2-2.4-10)

326 IAC 2-2.4-11 Increasing a PAL during the PAL effective period

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

Affected: IC 13-15; IC 13-17

Sec. 11. (a) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT

equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level after meeting the public notice requirements of section 5 of this rule. (*Air Pollution Control Board; 326 IAC 2-2.4-11*)

326 IAC 2-2.4-12 Monitoring requirements for PALs

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

Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.

(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:

(A) that meets subdivision (1); and

(B) if it is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.

(3) CPMS or PEMS.

(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

- (1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or
- (2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

*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 2-2.4-12*)

326 IAC 2-2.4-13 Record keeping requirements

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

Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

- (1) A copy of the PAL permit application and any applications for revisions to the PAL.
- (2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

*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 2-2.4-13*)

326 IAC 2-2.4-14 Reporting and notification requirements

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

Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

- (1) The identification of owner and operator and the permit number.
- (2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

- (3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
- (4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.
- (5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.
- (6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.
- (7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

- (1) The identification of owner and operator and the permit number.
- (2) The PAL requirement that experienced the deviation or that was exceeded.
- (3) Emissions resulting from the deviation or the exceedance.
- (4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. (*Air Pollution Control Board; 326 IAC 2-2.4-14*)

326 IAC 2-2.4-15 Termination and revocation of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

- (1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.
- (2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. (*Air Pollution Control Board; 326 IAC 2-2.4-15*)

326 IAC 2-2.4-16 Transition requirements

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

Affected: IC 13-15; IC 13-17

Sec. 16. (a) The department shall not issue a PAL that does not comply with the requirements in this rule after the date this rule is effective in the state implementation plan.

(b) The department may supersede any PAL that was established prior to the date this rule is effective in the state implementation plan with a PAL that complies with the requirements of this rule. (*Air Pollution Control Board; 326 IAC 2-2.4-16*)

SECTION 14. 326 IAC 2-2.6 IS ADDED TO READ AS FOLLOWS:

Rule 2.6. Federal NSR Requirements for Sources Subject to P.L.231-0003, SECTION 6

326 IAC 2-2.6-1 Applicability

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

Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to any source that meets both of the following criteria in this section:

(1) A source that belongs to industrial categories that function under the following Standard Industrial Classification (SIC) codes:

- (A) Blast furnaces and steel mills (3312).
- (B) Gray and ductile iron foundries (3321).
- (C) Malleable iron foundries (3322).
- (D) Steel investment foundries (3324).
- (E) Steel foundries (3325).
- (F) Aluminum foundries (3365).
- (G) Copper foundries (3366).
- (H) Nonferrous foundries (3369).

(2) A source belonging to an industry listed in subdivision (1) that experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(*Air Pollution Control Board; 326 IAC 2-2.6-1*)

326 IAC 2-2.6-2 Procedure for obtaining a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) Until July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements except the substitutions in subsection (b):

- (1) 326 IAC 2-2.
- (2) 326 IAC 2-2.2.
- (3) 326 IAC 2-2.3.
- (4) 326 IAC 2-2.4.
- (5) 326 IAC 2-3.
- (6) 326 IAC 2-3.2.
- (7) 326 IAC 2-3.3.
- (8) 326 IAC 2-3.4.

(b) The following substitutions shall be made for provisions in the rules in subsection (a):

(1) For the clean unit potential to emit limit:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-1(g)(4)	40 CFR Part 52.21(x)(6)(iv)*
326 IAC 2-2.2-1(h)(1)	40 CFR Part 52.21(x)(7)(i)*
326 IAC 2-2.2-2(h)(4)	40 CFR Part 52.21(y)(8)(iv)*
326 IAC 2-2.2-2(i)(2)	40 CFR Part 52.21(y)(9)(ii)*
326 IAC 2-3.2-1(f)(4)	40 CFR Part 51.165(c)(6)(iv)*
326 IAC 2-3.2-1(g)(1)(A)	40 CFR Part 51.165(c)(7)(i)(A)*
326 IAC 2-3.2-2(h)(4)	40 CFR Part 51.165(d)(8)(iv)*
326 IAC 2-3.2-2(i)(2)	40 CFR Part 51.165(d)(9)(ii)*

(2) For the clean unit retroactive designation and comparability analysis:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-2(d)(1)	40 CFR Part 52.21(y)(4)(i)*
326 IAC 2-2.2-2 (d)(3)	40 CFR Part 52.21(y)(4)(iii)(A)*, except that “March 3, 2003” should be changed to “the date this rule is effective in the state implementation plan”
326 IAC 2-2.2-2(f)	40 CFR Part 52.21(y)(6)*
326 IAC 2-3.2-2(d)(1)	40 CFR Part 51.165(d)(4)(i)*
326 IAC 2-3.2-2(d)(3)	40 CFR Part 51.165(d)(4)(iii)(A)*
326 IAC 2-3.2-2(f)	40 CFR Part 51.165(d)(6)*

(c) In addition to subsections (a) and (b), the source shall submit to the department evidence that the industry to which the source belongs, based on the Standard Industrial Classification listed in section 1(1) of this rule, experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(d) After July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements:

- (1) 326 IAC 2-2.
- (2) 326 IAC 2-2.2.
- (3) 326 IAC 2-2.3.
- (4) 326 IAC 2-2.4.
- (5) 326 IAC 2-3.
- (6) 326 IAC 2-3.2.
- (7) 326 IAC 2-3.3.
- (8) 326 IAC 2-3.4.

*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 2-2.6-2*)

SECTION 15. 326 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-1 Definitions

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) “Actual emissions” means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a **two (2) year consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The commissioner may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit **other than an electric utility steam generating unit specified in subdivision (4); which that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit, **other than a new unit or the replacement of an existing unit;** actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation; information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.

(5) When applying for a pollution control project exclusion under subsection (s)(2)(H) for a pollution control project at an existing emissions unit, actual emissions of the unit following the installation of the pollution control project shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the emissions unit resumes regular operation; information demonstrating that the pollution control project and the physical or operational changes to the unit necessary to accommodate the project did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations. This subdivision cannot be used to determine if the pollution control project results in a significant net emissions increase. This subdivision can only be used for an application submitted under the pollution control project exclusion to determine if the project results in a significant net increase in representative actual annual emissions.

(4) This definition shall not apply for calculating a significant emissions increase under section 2(c) of this rule or for establishing a PAL under 326 IAC 2-3.4. Instead, subsections (d) and (mm) shall apply for those purposes.

(c) “Allowable emissions” means the emissions rate of a source calculated using the maximum rated capacity of the source unless a source is subject to state or federally enforceable permit limits **which that** restrict the operating rate or hours of operation, or both, and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR **Part 60**, New Source Performance Standards (NSPS)*, and 40 CFR **Part 61***, National Emission Standards for Hazardous Air Pollutants (NESHAPS)*.

(2) The emissions limitation imposed by any rule in this title, including those with a future compliance date.

(3) The emissions rate specified as a **federally an** enforceable permit condition, including those with a future compliance date.

(d) “Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined as follows:

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by

clause (B).

(2) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required under 326 IAC 2-3, except that the ten (10) year period shall not include any period earlier than November 15, 1990.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the state has applied the emissions reduction to an attainment demonstration or maintenance plan consistent with the requirements of section 3(b)(14) of this rule.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0), and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision (1), for other existing emissions units in accordance with the procedures contained in subdivision (2), and for a new emissions unit in accordance with the procedures contained in subdivision (3).

(d) (e) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which that are of a permanent nature. ~~Such~~ These activities include, but are not limited to, the following:

- (1) Installation of building supports and foundations.
- (2) Laying underground pipework.
- (3) Construction of permanent storage structures.

With respect to a change in method of operations, "~~begin actual construction~~" the term refers to those on-site activities, other than preparatory activities, which that mark the initiation of the change.

(e) (f) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the Clean Air Act~~ which that would be emitted from any proposed major stationary source or major modification which that the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such the~~ source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such the~~ pollutant. In no event shall application of best available control technology result in emissions of any pollutant which that would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and or 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such The~~ standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such the~~ design, equipment, work practice, or operation and shall provide for compliance by means which that achieve equivalent results.

(f) (g) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which that belong to the same

industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, that is, those **which that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement, U.S. Government Printing Office*.

~~(g)~~ **(h)** “Clean coal technology” means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(h)~~ **(i)** “Clean coal technology demonstration project” means a project using funds appropriated under the heading “Department of Energy–Clean Coal Technology”, up to a total amount of two billion five hundred million dollars (\$2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(j) “Clean unit” means an emissions unit that meets one (1) of the following:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-3.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-3.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(i)~~ **(k)** “Commence”, as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(j)~~ **(l)** “Complete”, in reference to an application for a permit, means that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the commissioner from requesting or accepting additional information.

~~(k)~~ **(m)** “Construction” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, **which that** would result in a change in actual emissions.

(n) “Continuous emissions monitoring system” or “CEMS” means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to:

(1) sample;

(2) condition, if applicable;

(3) analyze; and

(4) provide a record of;

emissions on a continuous basis.

(o) “Continuous emissions rate monitoring system” or “CERMS” means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(p) “Continuous parameter monitoring system” or “CPMS” means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O₂ or CO₂ concentrations; and

(2) record average operational parameter values on a continuous basis.

(q) “de minimis”, in reference to an emissions increase of volatile organic compounds from a modification in a serious or severe ozone nonattainment area, means an increase that does not exceed twenty-five (25) tons per year when the net emissions increases from the proposed modification are aggregated on a pollutant specific basis with all other net emissions increases from the source over a five (5) consecutive calendar year period prior to, and including, the year of the modification.

(r) “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(s) “Emissions unit” means any part of a stationary source ~~which that~~ emits or would have the potential to emit any **regulated NSR pollutant, regulated under the provisions of the Clean Air Act. For purposes of this rule, there are two (2) types of emissions units as described by the following:**

- (1) **A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.**
- (2) **An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1).**

(t) “Federal land manager” means, with respect to any lands in the United States, the secretary of the department with authority over the lands.

(u) “Federally enforceable” means all limitations and conditions that are enforceable by the U.S. EPA, including:

- (1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;
- (2) requirements within the state implementation plan; and
- (3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

(v) “Fugitive emissions” means those emissions ~~which that~~ could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(w) “Incidental emissions reductions” means the reductions in emissions of a pollutant achieved as an indirect result of complying with another rule for another pollutant.

(x) “Internal offset” means to use net emissions decreases from within the source to compensate for an increase in emissions.

(y) “Lowest achievable emission rate” or “LAER” means, for any source, the more stringent rate of emissions based on the following:

- (1) The most stringent emissions limitation ~~which that~~ is contained in the implementation plan of any state for ~~such the~~ class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that ~~such the~~ limitations are not achievable.
- (2) The most stringent emissions limitation ~~which that~~ is achieved in practice by ~~such the~~ class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate ~~permit allow~~ a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(z) “Major modification” means any physical change ~~in~~, or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase of a **regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source** or, in an area ~~which that~~ is classified as either a serious or severe ozone nonattainment area, an increase in VOC emissions that is not de minimis. ~~of any pollutant which is being regulated under the Clean Air Act.~~ The following provisions apply:

- (1) Any **significant emissions increase from any emissions units or net emissions increase at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.
- (2) A physical change or change in the method of operation shall not include the following:

- (A) Routine maintenance, repair, and replacement.
- (B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan under the Federal Power Act.
- (C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.
- (D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- (E) Use of an alternative fuel or raw material by a source ~~which:~~ **that the source:**
 - (i) ~~the source~~ was capable of accommodating before December 21, 1976, unless ~~such the~~ change would be prohibited under any enforceable permit condition ~~which that~~ was established after December 21, 1976, under 40 CFR **Part 52.21*** or regulations approved under 40 CFR **Part 51.160** through 40 CFR **Part 51.165*** or 40 CFR **Part 51.166***; or
 - (ii) ~~the source~~ is approved to use under any permit issued under this rule.
- (F) An increase in the hours of operation or in the production rate unless ~~such the~~ change would be prohibited under any enforceable permit condition ~~which that~~ was established after December 21, 1976, under 40 CFR **Part 52.21*** or regulations approved under 40 CFR **Part 51.160** through 40 CFR **Part 51.165*** or 40 CFR **Part 51.166***.
- (G) Any change in ownership at a stationary source.
- (H) The addition, replacement, or use of a pollution control project at an existing emissions unit ~~if the following conditions are met:~~ **meeting the requirements of 326 IAC 2-3.3. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.**
 - (i) Upon review, the department does not determine that:
 - (AA) such addition, replacement, or use renders the unit less environmentally beneficial; or
 - (BB) the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the CAA; if any; and
 - (CC) the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.

During review, the department may request that a source submit an analysis of the air quality impact of the net emissions increase of the pollution control project.

 - (ii) If a pollution control project would result in a significant net emissions increase in representative actual annual emissions of a pollutant for which an area is classified as nonattainment, or an emissions increase in VOC that is not de minimis in an area which is classified as either serious or severe ozone nonattainment, then those emissions shall be offset on a one-to-one (1:1) ratio, except that no offsets are required for the following:
 - (AA) A pollution control project for an electric utility steam generating unit.
 - (BB) A pollution control project that results in a significant net increase in representative actual annual emissions of any criteria pollutant for which the area is classified as nonattainment and current ambient monitoring data demonstrates that the air quality standard for that pollutant in the nonattainment area is not currently being violated.
 - (CC) A pollution control project for a NO_x budget unit, as defined in 326 IAC 10-4-2, that is being installed to control NO_x emissions for the purpose of complying with 326 IAC 10-4-2.
 - (iii) A pollution control project as described under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8).- (I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:
 - (i) the state implementation plan; and
 - (ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

(+) **(aa)** “Major stationary source” means the following:

- (1) Any stationary source of air pollutants, except for those subject to subdivision (2), ~~which that~~ emits or has the potential to emit one hundred (100) tons per year or more of any **air regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~
- (2) For ozone nonattainment areas, “major stationary source” includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit volatile organic compounds that would equal or exceed any of the following rates:

Ozone Classification	Rate
Marginal	100 tons per year

Moderate	100 tons per year
Serious	50 tons per year
Severe	25 tons per year

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

- (A) Primary lead smelter.
- (B) Secondary lead smelters.
- (C) Primary copper smelters.
- (D) Lead gasoline additive plants.
- (E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivision (1) if the change would by itself qualify as a major stationary source under subdivision (1).

~~(tt)~~ **(bb)** “Necessary preconstruction approvals or permits” means those permits or approvals required under 326 IAC 2-2, 326 IAC 2-5.1, and 326 IAC 2-7.

~~(v)~~ **(cc)** “Net emissions decrease” means the amount by which the sum of the creditable emissions increases and decreases from any source modification project is less than zero (0).

~~(w)~~ **(dd)** “Net emissions increase” ~~with reference to a significant net emissions increase;~~ means, **with respect to any regulated NSR pollutant emitted by a major stationary source, the following:**

(1) The amount by which the sum of the emission increases and decreases at a source following exceeds zero (0):

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under 326 IAC 2-3-2(c) and 326 IAC 2-3-2(d).

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (d), except that subsection (d)(1)(C) and (d)(2)(D) shall not apply.

(2) For the purpose of determining de minimis in an area classified as serious or severe for ozone, the amount by which the sum of the emission increases and decreases from any source modification project exceeds zero (0).

(3) The following emissions increases and decreases are to be considered when determining net emissions increase:

~~(t)~~ **(A)** Any increase in actual emissions from a particular physical change or change in the method of operation.

~~(z)~~ **(B)** Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

~~(A)~~ **(i)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs after January 16, 1979, and between the following:

~~(t)~~ **(AA)** The date five (5) years before construction of the particular change commences.

~~(t)~~ **(BB)** The date that the increase from the particular change occurs.

~~(B)~~ **(ii)** An increase or decrease in actual emissions is creditable only if the commissioner has not relied on the increase or decrease in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j).

~~(C)~~ **(iv)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(D)~~ **(v)** A decrease in actual emissions is creditable only to the extent that:

~~(t)~~ **(AA)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(t)~~ **(BB)** it is ~~federally~~ enforceable as a practical matter at and after the time that actual construction on the particular change begins;

~~(t)~~ **(CC)** the commissioner has not relied on it in issuing any permit under regulations approved under ~~40 CFR 51.160 through 40 CFR 51.165*~~ **40 CFR Part 51, Subpart I*** or the state has not relied on it in demonstrating attainment or reasonable further progress; ~~and~~

~~(iv)~~ **(DD)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(EE) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded under 326 IAC 2-3.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-3.3-1(g)(4) for the PCP and 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j) for a clean unit.

~~(E)~~ **(vi)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(vii) Subsection (b)(1) shall not apply for determining creditable increases and decreases or after a particular change or change in method of operation.

~~(x)~~ **(ee)** “New”, in reference to a major stationary source, a modified major stationary source, or a major modification, means one which that commences construction after the effective date of this rule.

(ff) “Nonattainment major new source review program” or “NSR program” means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the federal requirements of 40 CFR Part 51.165*, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI*. Any permit issued under the program is a major NSR permit.

~~(y)~~ **(gg)** “Pollution control project” or “PCP” means any activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit for purposes of reducing that reduces emissions of air pollutants from such the unit. ~~Such~~ **The qualifying activities or projects do not can** include the replacement or upgrade of an existing emissions unit control technology with a newer or different more effective unit. ~~or the reconstruction of an existing emissions unit. Such activities or projects are limited to any of~~ **Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-3.3-1(c) and 326 IAC 2-3.3-1(f). The following projects are presumed to be environmentally beneficial under 326 IAC 2-3.3-1(c)(1):**

(1) ~~The installation of~~ Conventional ~~and or~~ advanced flue gas desulfurization ~~and or~~ sorbent injection for control of sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, ~~and or~~ scrubbers for control of particulate matter or other pollutants.

(3) Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, ~~and~~ selective catalytic reduction, low emission combustion for internal combustion engines, and oxidation/absorption catalyst for control of nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and carbon adsorbers, and floating roofs for storage vessels for control of volatile organic compounds

~~and or~~ hazardous air pollutants. **For the purpose of this rule, “hydrocarbon combustion flare” means either a flare:**

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) ~~An activity or project~~ **Activities or projects undertaken** to accommodate switching, or partially switching, to a an inherently less polluting fuel, which is less polluting than the fuel in use prior to the activity or project, including, but not to be limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions and including any activity that is necessary to accommodate switching to an inherently less polluting the following fuel switches:

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of “unclean” wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

(6) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Sec. 5903(d) of Title 42 of the United States Code); or subsequent appropriations; up to a total amount of two billion five hundred million dollars (\$2,500,000,000) for commercial demonstration of clean coal technology; or similar projects funded through appropriations for the U.S. EPA:

(7) A permanent clean coal technology demonstration project that constitutes a repowering project:

(8) Pollution prevention projects which the department has determined through a significant source modification to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous air pollutants or that may result in an increase in utilization are not environmentally beneficial:

(9) Installation of a technology; for the purposes of this subsection; which is not listed in subdivisions (1) through (8) but is determined to be environmentally beneficial by the department through a significant source modification:

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(hh) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain "in-process recycling" practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

(z) (ii) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(jj) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O₂ or CO₂ concentrations; and

(2) calculate and record the mass emissions rate on a continuous basis.

(kk) "Prevention of significant deterioration permit" or "PSD permit" means any permit that is issued under 326 IAC 2-2 or under the program in 40 CFR Part 52.21*.

(ll) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(mm) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR

pollutant in any twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (d) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (ii).

~~(aa)~~ **(nn)** "Reasonable further progress" or "RFP" means the annual incremental reductions in emissions of a pollutant ~~which that~~ are sufficient in the judgment of the board to provide reasonable progress towards attainment of the applicable ambient air quality standards established by 326 IAC 1-3 by the dates set forth in the Clean Air Act.

~~(bb)~~ "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

~~(1) Atmospheric or pressurized fluidized bed combustion;~~

~~(2) Integrated gasification combined cycle;~~

~~(3) Magnetohydrodynamics;~~

~~(4) Direct and indirect coal-fired turbines;~~

~~(5) Integrated gasification fuel cells;~~

~~(6) As determined by the U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.~~

~~Repowering shall also include any oil or gas-fired unit, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.~~

~~(cc)~~ "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations); considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall do the following:

~~(1) Consider all relevant information, including, but not limited to, the following:~~

~~(A) Historical operational data;~~

~~(B) The company's own representations;~~

~~(C) Filings with Indiana or federal regulatory authorities;~~

~~(D) Compliance plans under Title IV of the CAA.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

(oo) “Regulated NSR pollutant”, for purposes of this rule, means the following:

(1) Nitrogen oxides or any volatile organic compounds.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subdivision (1) or (2) provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

~~(dd)~~ **(pp)** “Secondary emission” means emissions ~~which that~~ would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification ~~which that~~ causes the secondary emissions. Secondary emissions may include, but are not limited to **emissions from:**

(1) ~~emissions from the~~ ships or trains coming to or from the new or modified stationary source; and

(2) ~~emissions from~~ an off-site support facility ~~which that~~ would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~(ee)~~ **(qq)** “Significant”, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, means a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM ₁₀	15 tpy
Ozone (marginal and moderate areas)	40 tpy of volatile organic compound (VOC)
Lead	0.6 tpy

(rr) “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in subsection (qq) for that pollutant.

~~(ff)~~ **(ss)** “Source modification project” means all those physical changes or changes in the methods of operation at a source ~~which that~~ are necessary to achieve a specific operational change.

~~(gg)~~ **(tt)** “Stationary source” means any building, structure, facility, or installation, including a stationary internal combustion engine, ~~which that~~ emits or may emit ~~any air a regulated NSR pollutant. subject to regulation under the Clean Air Act.~~

~~(hh)~~ **(uu)** “Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

*These documents are incorporated by reference. ~~and~~ Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 ~~and 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 2-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1106; filed Nov 12, 1993, 4:00 p.m.: 17 IR 725; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1002; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Aug 17, 2001, 3:45 p.m.: 25 IR 6; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; errata filed Dec 12, 2002, 3:30 p.m.: 26 IR 1565*)

SECTION 16. 326 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-2 Applicability

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) This rule applies to new ~~and modified~~ major stationary sources or major modifications constructed in an area designated, ~~in 326 IAC 1-4 as of the date of submittal of a complete application,~~ as nonattainment ~~as of the date of submittal of a complete~~

application in 326 IAC 1-4, for a pollutant for which the stationary source or modification is major.

(b) This rule applies to modifications of major stationary sources of volatile organic compounds (VOC) in serious and severe ozone nonattainment areas as follows:

(1) A modification of a major stationary source with a de minimis increase in emissions shall be exempt from section 3 of this rule.

(2) A modification having an increase in emissions that is not de minimis to an existing major stationary source that does not have the potential to emit one hundred (100) tons or more of volatile organic compounds (VOC) per year will not be subject to section 3(a) of this rule if the owner or operator of the source elects to internal offset the increase by a ratio of one and three-tenths (1.3) to one (1). If the owner or operator does not make ~~such an~~ the election or is unable to, section 3(a) of this rule applies, except that best available control technology (BACT) shall be substituted for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.

(3) A modification having an increase in emissions that is not de minimis to an existing major stationary source emitting or having the potential to emit one hundred (100) tons of volatile organic compounds (VOC) or more per year will be subject to the requirements of section 3(a) of this rule, except that the owner or operator may elect to internal offset the increase at a ratio of one and three-tenths (1.3) to one (1) as a substitute for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.

(c) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (k) and (l) and consistent with the definition of major modification in section 1(z) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase except for VOC emissions in a severe or serious nonattainment area for ozone. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, in accordance with this subsection, except for VOC emissions in a severe or serious nonattainment area for ozone. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(dd) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.

(6) For a hybrid test for projects that involve multiple types of emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

~~(c)~~ **(d)** At ~~such the~~ time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any ~~federally~~ enforceable limitation ~~which that~~ was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this rule applies to the source or modification as though construction had not yet commenced on the source or modification.

~~(d)~~ **(e)** In the case of an area ~~which that~~ has been redesignated nonattainment, any source ~~which that~~ would not have been required to submit a permit application under 326 IAC 2-2 concerning the prevention of significant deterioration will not be subject to this rule if construction commences within eighteen (18) months of the area's redesignation.

~~(e)~~ **(f)** Major stationary sources or major modifications ~~which that~~ would locate in any area designated as attainment or unclassifiable in the state of Indiana and would exceed the following significant impact levels at any locality, for any pollutant ~~which~~

that is designated as nonattainment, must meet the requirements specified in section 3(a)(1) through 3(a)(3) of this rule. All values are expressed in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$):

Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
Sulfur dioxide	1	5	X	25	X
Total suspended particulates	1	5	X	X	X
PM ₁₀	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

(g) This rule does not apply to a source or modification, other than a source of volatile organic compounds in a serious or severe ozone nonattainment area or a source of PM₁₀ in a serious PM₁₀ area, that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (1) Coal cleaning plants (with thermal driers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mill plants.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day.
- (9) Hydrofluoric, sulfuric, and nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants.
- (21) Fossil-fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
- (22) Petroleum storage and transfer unit with a storage capacity exceeding three hundred thousand (300,000) barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
- (27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(h) For purposes of this rule, secondary emissions from a source need not be considered in determining whether the source would qualify as a major source. However, if a source is subject to this rule on the basis of the direct emissions from the source, the applicable conditions must also be met for secondary emissions. However, **such** the secondary emissions may be exempt from the requirements specified in section 3(a)(2) through 3(a)(3) of this rule.

(i) Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

(j) The installation, operation, cessation, or removal of temporary clean coal technology demonstration projects funded under the Department of Energy–Clean Coal Technology Appropriations may be exempt from the requirements of section 3 of this rule.

To qualify for this exemption, the project must be at an existing facility, operate for no more than five (5) years, and comply with all other applicable rules for the area.

(k) For any major stationary source operating under a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 326 IAC 2-3.4.

(l) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-3.3.

(m) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(mm)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(mm)(2)(A)(3) of this rule and an explanation for why the amount was excluded; and

(iv) any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1), exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) Any other information that the owner or operator wishes to include in the report.

(6) The owner or operator of the source shall make the information required to be documented and maintained under subdivisions (1) through (5) available for review upon a request for inspection by the department or the general public under 326 IAC 17.1.

(Air Pollution Control Board; 326 IAC 2-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2404; filed Nov 12, 1993, 4:00 p.m.: 17 IR 728; filed Aug 17, 2001, 3:45 p.m.: 25 IR 11)

SECTION 17. 326 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-3 Applicable requirements

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

Affected: IC 13-15; IC 13-17

Sec. 3. (a) Prior to the issuance of a construction permit to a source subject to this rule, the applicant shall comply with the following requirements:

(1) The proposed major new source or major modification shall demonstrate that the source will meet all applicable requirements of this title, any applicable new source performance standard in 40 CFR **Part 60***, or any national emission standard for hazardous air pollutants in 40 CFR **Part 61***. If the commissioner determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct will be denied.

(2) The applicant will apply emission limitation devices or techniques to the proposed construction or modification such that the lowest achievable emission rate (LAER) for the applicable pollutant will be achieved.

(3) The applicant shall either demonstrate that all existing major sources owned or operated by the applicant in the state of Indiana are in compliance with all applicable emission limitations and standards contained in the Clean Air Act and in this title or demonstrate that they are in compliance with a federally enforceable compliance schedule requiring compliance as expeditiously as practicable.

(4) The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for ~~such the~~ proposed source ~~which that~~ demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) Emissions resulting from the proposed construction or modification shall be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The emission offset shall be such that there will be reasonable further progress toward attainment of the applicable ambient air quality standards as follows:

(A) Greater than one-for-one unless otherwise specified.

(B) For ozone nonattainment areas, the following table shall determine the minimum offset ratio requirements for major stationary sources of volatile organic compounds:

Ozone Classification	Minimum Offset Requirements
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1

(6) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the CAA shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

~~(7)~~ (7) The applicant shall obtain the necessary preconstruction approvals and shall meet all the permit requirements specified in 326 IAC 2-5.1 or 326 IAC 2-7.

(8) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with an applicable provision of the state implementation plan and any other requirements under local, state, or federal law.

(b) The following provisions shall apply to all emission offset evaluations:

(1) Emission offsets shall be determined on a tons per year and, whenever possible, a pounds per hour basis when all facilities requiring offset involved in the emission offset calculations are operating at their maximum potential or allowed production rate. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets shall be calculated using the allowed or actual annual operating hours, whichever is less.

(2) The baseline for determining credit for emission offsets will be the emission limitations or actual emissions, whichever is lower, in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowable for existing control that goes beyond that required by source-specific emission limitations contained in this title.

(3) In cases where the applicable rule under this title does not contain an emission limitation for a source or source category, the emission offset baseline involving ~~such the~~ sources shall be the actual emissions determined at their maximum expected or allowable production rate.

(4) In cases where emission ~~limits~~ **limitations** for existing sources allow greater emissions than the ~~uncontrolled emission rate~~ **potential to emit** of the source, emission offset credit shall only be allowed for emissions controlled below the ~~uncontrolled emission rate:~~ **potential to emit**.

(5) A source may receive offset credit from emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels ~~provided; that the work force to be affected has been notified of the~~

proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be federally enforceable. Emission offsets may be credited for a source shutdown or curtailment provided that the applicant can establish that such shutdown or curtailment occurred less than one (1) year prior to the date of permit application; and the proposed new source is a replacement for the shutdown or curtailment. **if the reductions are permanent, quantifiable, and federally enforceable and if the area has an attainment plan approved by U.S. EPA. Offset credits from emission reductions must be in compliance with the following:**

(A) The shutdown or curtailment is creditable only if it occurred on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For the purposes of this clause, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory if the inventory explicitly includes, as current existing emissions, the emissions from such previously shutdown or curtailed sources.

(B) The reductions may be credited in the absence of an approved attainment demonstration only if:

(i) the shutdown or curtailment occurred on or after the date the new source permit application is filed; or

(ii) if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions in subdivision (5)(A) are observed.

(6) Emission offset credit involving an existing fuel combustion source will be based on the allowable emissions under other rules of this title for the type of fuel being burned at the time the new source application is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is acceptable, provided the permit is conditioned to require the use of a specific alternative control measure **which that** would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The commissioner will grant emission offset credit for fuel switching only after ensuring that adequate supplies of the new fuel are available at least for the next ten (10) years.

(7) In the case of volatile organic compound emissions, no emission offset credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds defined as nonphotochemically reactive hydrocarbons in 326 IAC 1-2-48.

(8) No emission reduction may be approved to offset emissions **which that** cannot be federally enforced. Offsetting emissions shall be considered federally enforceable if the reduction is included as a condition in the applicable permit as specified in 326 IAC 2-5.1 or 326 IAC 2-7 if issued under a federally-approved air permit program.

(9) Emission reductions required under any other rule adopted by the air pollution control board shall not be creditable as emission reductions and therefore cannot be used for emission offsets.

(10) Incidental emission reductions that are not otherwise required by any other rule adopted by the air pollution control board shall be creditable as emission reductions for emission offsets if **such the** emission reductions meet all of the other requirements for offsets.

(11) A source may offset by alternative or innovative means emission increases from rocket engine or motor firing and cleaning related to **such the** firing at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test **such the** engines on November 15, 1990.

(B) The source demonstrates to the satisfaction of the department that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(C) The source has obtained a written finding from:

(i) the Department of Defense;

(ii) the Department of Transportation;

(iii) the National Aeronautics and Space Administration; or

(iv) other appropriate federal agency;

that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by the department, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(12) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.

(13) Decreases in actual emissions occurring at a clean unit cannot be used as offsets except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j). Decreases in actual emissions occurring at a PCP cannot be used as offsets except as provided in 326 IAC 2-3.3-1(g)(4).

(14) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in:

- (A) issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I*; or
- (B) a demonstration for attainment or reasonable further progress.

*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 2-3-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2406; filed Nov 12, 1993, 4:00 p.m.: 17 IR 730; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1005; filed Aug 17, 2001, 3:45 p.m.: 25 IR 12)

SECTION 18. 326 IAC 2-3.2 IS ADDED TO READ AS FOLLOWS:

Rule 3.2. Clean Unit Designations

326 IAC 2-3.2-1 Clean unit designations for emission units subject to LAER

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This section applies to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-1(q) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-2(c)(6) as if the emissions unit is not a clean unit.

(5) For emissions units that meet the requirements of clauses (A) and (B), the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subsections (c) through (h). For these emissions units, all requirements for the LAER determination under subdivisions (2) and (3) shall also apply to the BACT permit terms and conditions. In addition, the requirements of subsection (g)(1)(B) do not apply to emissions units that qualify for clean unit status under this subdivision.

(A) The emissions unit must have received a PSD permit within the last ten (10) years, and the permit must require the emissions unit to comply with BACT.

(B) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the date this rule is effective in the state implementation plan.

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit designation expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet

all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the past ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology that includes pollution prevention or work practices and that meets both the following requirements:

(A) The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for clean unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following applicable provision:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the clean unit applicability test are approved by the U.S. EPA for incorporation into the state implementation plan and become effective.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following applicable provisions:

(1) For original clean unit designation and emissions units that requalify by implementing new control technology to meet current-day LAER, for any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutants for which this clean unit designation applies.

(2) If the effective date of the clean unit designation is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) If the expiration date of the clean unit designation is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with the LAER and any physical or

operational characteristic that formed the basis for the LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as presented in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects clean unit designation only for that pollutant. To maintain the clean unit designation, the owner or operator must conform to the following:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit, including the following:

(A) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4).

(B) The clean unit may not emit above a level that has been offset.

(2) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementation plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. (*Air Pollution Control Board; 326 IAC 2-3.2-1*)

326 IAC 2-3.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-1(q) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to the provisions in this section. This section applies to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to LAER as determined by the department in accordance with this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit qualifies as a clean unit under subsection (c)(4). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-2(c)(6) as if the emissions unit were never a clean unit.

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (3). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subsection (c)(4) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subsection (c)(4), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subsection (c)(4). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets both the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subdivision (d). However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) An emissions unit may qualify as a clean unit even if the control technology on which the clean unit designation is based was installed before the effective date of the approval by the U.S. EPA of this provision in the state implementation plan. However, for the emissions units, the owner or operator must apply for the clean unit designation within two (2) years after the plan requirements become effective. For technologies installed after the state implementation plan requirements become effective, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

(4) To requalify for clean unit, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in subsection (c)(1)(A) and (c)(2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subsection (c)(1) according to either subdivision (1) or (2). Subdivision (3) specifies the time for making this comparison. The following provisions apply:

(1) The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as LAER, as defined in 326 IAC 2-3-1(y), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional LAER determinations of which it is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(e) The effective date of an emissions unit's clean unit designation, which is the date on which the owner or operator may begin to use the clean unit test to determine whether a project involving the emissions unit is a major modification, is the date the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing a permit in accordance with 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The permit must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 shall include the terms and conditions set forth in this subsection. The following terms and conditions shall be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7-12:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutants for which this designation applies.

(2) If effective date of the clean unit designation is not known when the department issues the permit, then the permit must describe the event that will determine the effective date. When the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, but in no case later than the next renewal.

(3) If the expiration date of the clean unit designation is not known when the department issues the permit, then the permit must describe the event that will determine the expiration date. When the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as presented in subsection (i).

(i) To maintain clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER as specified in subsection (h)(4).

(3) The clean unit may not emit above a level that has been offset.

(4) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(5) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementation plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(b)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. (*Air Pollution Control Board; 326 IAC 2-3.2-2*)

SECTION 19. 326 IAC 2-3.3 IS ADDED TO READ AS FOLLOWS:

Rule 3.3. Pollution Control Project Exclusion Procedural Requirements

326 IAC 2-3.3-1 Pollution control project exclusion procedural requirements

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department, if the project is listed in 326 IAC 2-3-1(gg), or, if the project is not listed in 326 IAC 2-3-1(gg), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emission reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology from 326 IAC 2-3-1(gg) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant and the projected emissions increases and decreases using the methodology in 326 IAC 2-3-2(c) that will result from the project and a copy of the environmentally

beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-3-1(gg), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-3-1(gg), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department must address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase or be used for generating offsets unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(h) If the PCP would result in a significant net emissions increase in any regulated NSR pollutant for which the area is classified as nonattainment, the significant net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio, except in an area that is classified as either serious or severe nonattainment for ozone. The emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The significant net emission increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(i) If the PCP would result in an increase in VOC emissions that is not de minimis in an area that is classified as either serious or severe nonattainment for ozone, the VOC net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The VOC emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The VOC net emissions increase from the PCP shall be offset so that the emissions increase

will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public. (*Air Pollution Control Board; 326 IAC 2-3.3-1*)

SECTION 20. 326 IAC 2-3.4 IS ADDED TO READ AS FOLLOWS:

Rule 3.4. Actuals Plantwide Applicability Limitations

326 IAC 2-3.4-1 Applicability

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The department may approve the use of an actuals plantwide applicability limitation (PAL) for any existing major stationary source, except as provided in subsection (b), if the PAL meets the requirements in this rule. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level meets the requirements in this rule and complies with the PAL permit:

- (1)** is not a major modification for the PAL pollutant;
- (2)** does not have to be approved through 326 IAC 2-3; and
- (3)** is not subject to 326 IAC 2-3-2(d) concerning restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program.

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(e) A PAL shall not be issued to a source in an extreme nonattainment area. (*Air Pollution Control Board; 326 IAC 2-3.4-1*)

326 IAC 2-3.4-2 Definitions

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-3-1 or in the CAA.

(b) “Actuals PAL” for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) “Allowable emissions”, for the purposes of this rule, means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

(3) An emissions unit’s potential to emit shall be determined using the definition in 326 IAC 2-3-1.

(d) “Major emissions unit” means any emissions unit that emits or has the potential to emit:

(1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) “PAL effective date” generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) “PAL effective period” means the period beginning with the PAL effective date and ending ten (10) years later.

(g) “PAL major modification” means, notwithstanding the definitions for major modification in 326 IAC 2-3-1(z) and net emissions increase in 326 IAC 2-3-1(dd), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) “PAL permit” means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) “PAL pollutant” means the pollutant for which a PAL is established at a major stationary source.

(j) “Plantwide applicability limitation” or “PAL” means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) “Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in 326 IAC 2-3-1 or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) “Small emissions unit” means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in 326 IAC 2-3-1(qq) or in the CAA, whichever is lower.

*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 2-3.4-2*)

326 IAC 2-3.4-3 Permit application requirements

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

Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(*Air Pollution Control Board; 326 IAC 2-3.4-3*)

326 IAC 2-3.4-4 General requirements for establishing PALs

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

Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

- (1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, on a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
- (2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.
- (3) The PAL permit shall contain all the requirements of section 7 of this rule.
- (4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
- (5) Each PAL shall regulate emissions of only one (1) pollutant.
- (6) Each PAL shall have a PAL effective period of ten (10) years.
- (7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. (*Air Pollution Control Board; 326 IAC 2-3.4-4*)

326 IAC 2-3.4-5 Public participation requirement for PALs

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

Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be established, renewed, increased, terminated, or revoked through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. (*Air Pollution Control Board; 326 IAC 2-3.4-5*)

326 IAC 2-3.4-6 Establishing a ten year actuals PAL level

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

Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the least of the following levels:

- (1) The applicable significant level in 326 IAC 2-3-1(qq) for the PAL pollutant.
- (2) The de minimis level in 326 IAC 2-3-1(q) in case of the PAL for VOC emissions for sources located in severe or serious nonattainment areas.
- (3) The level specified under CAA.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. (*Air Pollution Control Board; 326 IAC 2-3.4-6*)

326 IAC 2-3.4-7 Contents of the PAL permit

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

Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit shall contain, at a minimum, the following information:

- (1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.
- (2) The PAL effective period including the permit effective date and the expiration date of the PAL.
- (3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.
- (4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.
- (5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.
- (6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.
- (7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.
- (8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.
- (9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.
- (10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(*Air Pollution Control Board; 326 IAC 2-3.4-7*)

326 IAC 2-3.4-8 PAL effective period and reopening of the PAL permit

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

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

- (1) During the PAL effective period, the department shall reopen the PAL permit to:
 - (A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
 - (B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or
 - (C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.
- (2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:
 - (A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.
 - (B) Consistent with any other requirement, which is enforceable as a practical matter, and that the state may impose on the major stationary source under the state implementation plan.
 - (C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.
- (3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(*Air Pollution Control Board; 326 IAC 2-3.4-8*)

326 IAC 2-3.4-9 Expiration of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(1), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if the change meets the definition of major modification in 326 IAC 2-3-1.

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-3-2(d) but were eliminated by the PAL in accordance with the provisions in section 1(c)(3) of this rule. (*Air Pollution Control Board; 326 IAC 2-3.4-9*)

326 IAC 2-3.4-10 Renewal of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in this subsection. However, in no case may any adjustment fail to comply with subdivision (3). The options are as follows:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:

(A) air quality needs;

(B) advances in control technology;

(C) anticipated economic growth in the area;

(D) desire to reward or encourage the source's voluntary emissions reductions; or

(E) other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. (*Air Pollution Control Board; 326 IAC 2-3.4-10*)

326 IAC 2-3.4-11 Increasing a PAL during the PAL effective period

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

Affected: IC 13-15; IC 13-17

Sec. 11. (a) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator obtains a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process, even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of section 5 of this rule. (*Air Pollution Control Board; 326 IAC 2-3.4-11*)

326 IAC 2-3.4-12 Monitoring requirements for PALs

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

Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.

(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:

(A) that meets subdivision (1); and

(B) if it is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.

(3) CPMS or PEMS.

(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six

(6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

- (1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or
- (2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

*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 2-3.4-12*)

326 IAC 2-3.4-13 Record keeping requirements

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

Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

- (1) A copy of the PAL permit application and any applications for revisions to the PAL.
- (2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

*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 2-3.4-13*)

326 IAC 2-3.4-14 Reporting and notification requirements

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

Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

- (1) The identification of owner and operator and the permit number.
- (2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.
- (3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
- (4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.
- (5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.
- (6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the

calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. (*Air Pollution Control Board; 326 IAC 2-3.4-14*)

326 IAC 2-3.4-15 Termination and revocation of a PAL

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

Affected: IC 13-15; IC 13-17

Sec. 15. (a) The section applies to any PAL that is terminated or revoked prior to the PAL effective period as specified in section 8 of this rule.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. (*Air Pollution Control Board; 326 IAC 2-3.4-15*)

326 IAC 2-3.4-16 Transition requirements

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

Affected: IC 13-15; IC 13-17

Sec. 16. (a) The department shall not issue a PAL that does not comply with the requirements in this rule after the date this rule is effective in the state implementation plan.

(b) The department may supersede any PAL that was established prior to the date this rule is effective in the state implementation plan with a PAL that complies with the requirements of this rule. (*Air Pollution Control Board; 326 IAC 2-3.4-16*)

SECTION 21. 326 IAC 2-5.1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-5.1-4 Transition procedures

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

Affected: IC 13-15-4-9; IC 13-17

Sec. 4. (a) The commissioner shall include an approval to operate and operating conditions in an initial construction permit. The level of approval shall be as follows:

(1) A source ~~may request~~ **shall obtain** approval to operate under a state operating permit under 326 IAC 2-6.1 if ~~either of the following applies:~~

~~(A) the permit does not include terms and conditions that limit the potential to emit of the source to below thresholds that would require a Part 70 permit.~~

~~(B) The source is subject to the Part 70 requirements under 326 IAC 2-7 and will submit a Part 70 permit application within twelve (12) months of the date the source is approved to operate.~~

(2) A source will obtain approval to operate as a FESOP under 326 IAC 2-8 if the permit includes terms and conditions that limit the potential to emit of the source to below the thresholds that require the source to obtain a Part 70 permit and is issued in accordance with 326 IAC 2-8-13.

(3) A source ~~may~~ **shall** obtain approval to operate as a Part 70 source under 326 IAC 2-7 if:

(A) the source is constructing under 326 IAC 2-2 or 326 IAC 2-3; or

(B) the potential to emit exceeds the Part 70 major source thresholds as defined in 326 IAC 2-7-1(22).

The permit **must include the permit content in accordance with 326 IAC 2-7-5** and compliance requirements ~~conform to 326 IAC 2-7-5 and in accordance with 326 IAC 2-7-6~~ and the permit **is must be** issued in accordance with 326 IAC 2-7-17.

(b) If all terms and conditions of 326 IAC 2-1.1-6 were satisfied in the processing of the construction permit, then the emission limitations may be included in the subsequent operating permit without repeating the public notice requirements in 326 IAC 2-1.1-6. (*Air Pollution Control Board; 326 IAC 2-5.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1011*)

SECTION 22. 326 IAC 2-7-10.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-10.5 Part 70 permits; source modifications

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15-5; IC 13-17

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to construct new emission units, modify existing emission units, or otherwise modify the source as described in this section shall submit a request for a modification approval in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a modification approval or operating permit revision under a provision of this rule, the owner or

operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) Any person proposing to make a modification described in subsection (d) or (f) shall submit an application to the commissioner concerning the modification as follows:

(1) If only preconstruction approval is requested, the application shall contain the following information:

(A) The company name and address.

(B) The following descriptive information:

(i) A description of the nature and location of the proposed construction or modification.

(ii) The design capacity and typical operating schedule of the proposed construction or modification.

(iii) A description of the source and the emissions unit or units comprising the source.

(iv) A description of any proposed emission control equipment, including design specifications.

(C) A schedule for proposed construction or modification of the source.

(D) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the Clean Air Act (CAA), the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:

(i) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(ii) Estimates of offset credits, as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.

(iii) Any other information, including, but not limited to, the air quality impact, determined by the commissioner to be necessary to reasonably demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(E) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. ~~Such~~ **The** signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(2) If the source requests that the preconstruction approval and operating permit revision be combined, the application shall contain the information in subdivision (1) and the following information consistent with section 4(c) of this rule:

(A) An identification of the applicable requirements to which the source will be subject as a result of the modification, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(B) A description of the Part 70 permit terms and conditions that will apply to the modification and that are consistent with sections 5 and 6 of this rule.

(C) A schedule of compliance, if applicable.

(D) A statement describing what the compliance status of the modification will be after construction has been completed consistent with section 4(c)(10) of this rule.

(E) A certification consistent with section 4(f) of this rule.

(d) The following modifications shall be processed in accordance with subsection (e):

(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source if the addition or relocation would require a change to any permit terms or conditions.

~~(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1(13) that do not increase the potential to emit PM_{10} greater than or equal to fifteen (15) tons per year or any other regulated pollutant greater than the thresholds under subdivision (4); but require a significant change in the method or methods to demonstrate or monitor compliance.~~

~~(4)~~ **(3)** Modifications that would have a potential to emit within any of the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO_2).

- (ii) Nitrogen oxides (NO_x).
- (iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).
- (C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.
- (D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).
- (E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).
- (F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:
 - (i) Hydrogen sulfide (H₂S).
 - (ii) Total reduced sulfur (TRS).
 - (iii) Reduced sulfur compounds.
 - (iv) Fluorides.
- ~~(5)~~ (4) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:
 - (A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.
 - (B) Limiting annual hours of operation of the process or business.
 - (C) Using a particulate air pollution control device as follows:
 - (i) Achieving and maintaining ninety-nine percent (99%) efficiency.
 - (ii) Complying with a no visible emission standard.
 - (iii) The potential to emit before controls does not exceed major source thresholds for federal permitting programs.
 - (iv) Certifying to the commissioner that the control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM₁₀).
 - (D) Limiting individual fuel usage and fuel type for a combustion source.
 - (E) Limiting raw material throughput or sulfur content of raw materials, or both.
- ~~(6)~~ (5) A modification that is subject to a reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR Part 63, Subpart B, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (b), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.
- ~~(7)~~ (6) A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.
- ~~(8)~~ (7) A modification of an existing source that has a potential to emit greater than the thresholds under subdivision (4) if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:
 - (A) results in the replacement or repair of an entire process;
 - (B) qualifies as a reconstruction of an entire process;
 - (C) may result in an increase of actual emissions; or
 - (D) would result in a net emissions increase greater than the significant levels in 326 IAC 2-2 or 326 IAC 2-3.
- ~~(9)~~ (8) A modification that has a potential to emit greater than the thresholds under subdivision (4) that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.
- ~~(10)~~ (9) For a source in Lake or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO_x, any modification that would result in an increase of either emissions as follows: **greater than or equal to the following:**
 - (A) ~~Greater than or equal to~~ Fifteen (15) pounds per day of VOCs.
 - (B) ~~Greater than or equal to~~ Twenty-five (25) pounds per day of NO_x.
- (e) Modification approval procedures for modifications described under subsection (d) are as follows:
 - (1) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has approved the modification request.
 - (2) Within forty-five (45) calendar days from receipt of an application for a modification described under subsection (d), the commissioner shall do one (1) of the following:

(A) Approve the modification request.

(B) Deny the modification request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards would allow for an increase in emissions greater than the thresholds in subsection (f) or would not provide for compliance monitoring consistent with this rule and should be processed under subsection (g).

(3) The source may begin construction as follows:

(A) If the source has a final Part 70 permit and only requests preconstruction approval or if the source does not have a final Part 70 permit, the source may begin construction upon approval by the commissioner. Notwithstanding IC 13-15-5, the commissioner's approval shall become effective immediately. Operation of the modification shall be as follows:

(i) For a source that has a final Part 70 permit, operation of the modification may commence in accordance with section 12 of this rule.

(ii) For a source without a final Part 70 permit, operation may begin after construction is completed.

(B) If the source requests that the preconstruction approval and operating permit revision be combined, the source may begin construction upon approval and operation may begin in accordance with section 11 of this rule.

(f) The following modifications shall be processed in accordance with subsection (g):

(1) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(2) A modification that is subject to 326 IAC 8-1-6.

(3) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(4) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of any of the following pollutants:

(A) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM₁₀).

(B) Sulfur dioxide (SO₂).

(C) Nitrogen oxides (NO_x).

(D) Volatile organic compounds (VOC).

(E) Hydrogen sulfide (H₂S).

(F) Total reduced sulfur (TRS).

(G) Reduced sulfur compounds.

(H) Fluorides.

(5) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(6) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(7) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(8) The addition, replacement, or use of a pollution control project, as defined in ~~326 IAC 2-1.1-1(13)~~ **326 IAC 2-2-1(II) or 326 IAC 2-3-1(gg)**, that is ~~exempt under 326 IAC 2-2-1(o)(2)(H)~~. **The requirement to process such modifications in accordance with subsection (g) does not apply to pollution control projects that the department approved as an environmentally beneficial pollution control project through a permit issued prior to July 1, 2000; must obtain an exclusion under 326 IAC 2-2.3 or 326 IAC 2-3.3 and is not included in the presumptive list in 326 IAC 2-2-1(II) or 326 IAC 2-3-1(gg).**

(9) Modifications involving a pollution prevention project, as defined in 326 IAC 2-1.1-1(13), that increase the potential to emit any regulated pollutant greater than the applicable thresholds under subdivisions (3) through (7). ~~The requirement to process such~~ **the** modifications in accordance with subsection (g) does not apply to pollution prevention projects that the department approved as an environmentally beneficial pollution prevention project through a permit issued prior to July 1, 2000.

(10) The designation of a clean unit that is using control technology comparable to BACT or LAER as defined in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2.

(g) The following shall apply to the modifications described in subsection (f):

(1) Any person proposing to make a modification described in subsection (f) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has issued a modification approval.

(3) The commissioner shall approve or deny the modification as follows:

(A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (f) except subsection (f)(1) **and (f)(10).**

(B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (f)(1) **or (f)(10)**.

(4) A modification approval under this subsection may be issued only if all of the following conditions have been met:

(A) The commissioner has received a complete application for a modification.

(B) The commissioner has complied with the requirements for public notice as follows:

(i) For modifications for which a source is only requesting preconstruction approval, the commissioner has complied with the requirements under 326 IAC 2-1.1-6.

(ii) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the commissioner has complied with the requirements under section 17 of this rule.

(C) The conditions of the modification approval provide for compliance with all applicable requirements and the requirements of this rule.

(D) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the U.S. EPA has received a copy of the proposed modification approval and any notices required and has not objected to the issuance of the modification approval within the time period specified in section 18 of this rule.

(5) The commissioner shall provide a technical support document that sets forth the legal and factual basis for draft modification approval conditions, including references to the applicable statutory and regulatory provisions. The commissioner shall send this technical support document to the U.S. EPA, the applicant, and any other person who requests it.

(h) The following shall apply to a modification approval described in subsection (f) for a source that has not received a final Part 70 permit:

(1) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(A) The affidavit shall include the following:

(i) Name and title of the authorized individual.

(ii) Company name.

(iii) Subject to item (iv), an affirmation that the emissions units described in the modification approval were constructed in conformance with the request for modification approval and that ~~such the~~ emissions units will comply with the modification approval.

(iv) Identification of any changes to emissions units not included in the request for modification approval, but which should have been included under subsection (a).

(v) Signature of the authorized individual.

(B) The affidavit shall be notarized.

(C) A source shall submit the affidavit to the commissioner either after construction of all the emission units described in the modification approval or after each phase of construction of the emission units described in the modification approval, as applicable, has been completed.

(2) A source may not operate any emissions units described in the modification approval prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(A) A source may operate the emissions units covered by the affirmation in the affidavit of construction upon submission of the affidavit of construction.

(B) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(C) The validation letter shall authorize the operation of all or part of each emissions unit covered by the affirmation in the affidavit of construction.

(D) Subject to clause (E), the validation letter shall include any amendments to the modification approval if ~~such the~~ amendment is requested by the source and if ~~such the~~ amendment does not constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(E) A validation letter shall not approve the operation of any emissions unit if an amendment to the modification approval requested by the source would constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(i) Each modification approval issued under this rule shall provide that construction must commence within eighteen (18) months of the issuance of the modification approval.

(j) All modification approval proceedings under this section shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft modification approval as established in 326 IAC 2-1.1-6 or section 17 of this rule.

(k) The commissioner shall provide for review by the U.S. EPA and affected states of each modification application, draft modification approval, proposed modification approval, and final modification approval in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

(l) A modification approval issued in accordance with this section shall be incorporated into the source's Part 70 permit or permit application as follows:

(1) For a source that has a final Part 70 permit and requested that the preconstruction approval and permit revision be combined, the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

(2) For a source that has a final Part 70 permit and requested only a preconstruction approval, the source may begin operation in accordance with section 12 of this rule.

(3) For a source that has a complete Part 70 permit application on file, but does not have a final Part 70 permit and requested only preconstruction approval, the modification approval shall be deemed incorporated in the Part 70 permit application and will be included in the Part 70 permit when issued.

*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 2-7-10.5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065*)

SECTION 23. 326 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-11 Administrative permit amendments

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 11. (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the Part 70 permit or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a Part 70 permit is necessary, provided that a written agreement containing a specific date for transfer of a Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Incorporates into a Part 70 permit the requirements from preconstruction permits issued under section 10.5 of this rule that have satisfied the requirements of sections 17 and 18 of this rule as appropriate.

(6) Incorporates into a Part 70 permit a general permit issued under section 13 of this rule.

(7) Revises descriptive information where the revision will not trigger a new applicable requirement or violate a permit term.

(8) Incorporates an exempt unit as described in 326 IAC 2-1.1-3, an insignificant activity as defined in 326 IAC 2-7-1(21), or a PAL small emissions unit as defined in 326 IAC 2-2.4-2(m) or 326 IAC 2-3.4-2(l), that does not otherwise constitute a modification for purposes of section 10.5 or 12 of this rule.

(b) Administrative Part 70 permit amendments, for purposes of the acid rain portion of a Part 70 permit, shall be governed by regulations promulgated under Title IV of the CAA.

(c) An administrative Part 70 permit amendment may be made by the commissioner consistent with the following:

(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on ~~such the~~ request and may incorporate ~~such the~~ changes without providing prior notice to the public or affected states provided that it designates ~~any such these~~ Part 70 permit revisions as having been made under this subsection.

(2) The commissioner shall submit a copy of a revised Part 70 permit to the U.S. EPA.

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(Air Pollution Control Board; 326 IAC 2-7-11; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1043; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 24. 326 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-12 Permit modification

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 12. (a) A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under section 11 of this rule. A permit modification, for purposes of the acid rain portion of the permit, shall be governed by regulations promulgated under Title IV of the CAA.

(b) Minor permit modification procedures shall be as follows:

(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

(A) Do not violate any applicable requirement.

(B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the Part 70 permit.

(C) Do not require or change a:

(i) case-by-case determination of an emission ~~limit~~ **limitation** or other standard;

(ii) source specific determination for temporary sources of ambient impacts; or

(iii) visibility or increment analysis.

(D) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. ~~Such~~ **The** terms and conditions include the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.

(ii) An alternative emissions limit approved under regulations promulgated under Section 112(i)(5) of the CAA.

(E) Are not modifications under any provision of Title I of the CAA.

(F) The addition of a clean unit that was automatically designated as described in 326 IAC 2-2.2-1 or 326 IAC 2-3.2-1.

(G) The addition of a listed PCP as defined in 326 IAC 2-2-1(II) or 326 IAC 2-3-1(gg).

~~(F)~~ **(H)** Are not required by the Part 70 program to be processed as a significant modification.

(2) Notwithstanding subdivision (1) and subsection (c)(1), minor Part 70 permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable Part 70 permits, emissions trading, and other similar approaches to the extent that ~~such the~~ minor Part 70 permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated or approved by the U.S. EPA.

(3) An application requesting the use of minor Part 70 permit modification procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit reflecting the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of minor Part 70 permit modification procedures and a request that ~~such the~~ procedures be used.

(D) Completed forms for the commissioner to use to notify the U.S. EPA and affected states.

(E) A copy of any previous approval issued by the commissioner under this article.

(4) The public notice provisions of section 17 of this rule shall apply to minor modifications.

(5) Within five (5) working days of receipt of a complete Part 70 permit modification application, the commissioner shall notify the U.S. EPA and affected states of the requested Part 70 permit modification. The commissioner promptly shall send any notice required to the U.S. EPA.

(6) The commissioner may not issue a final Part 70 permit modification until after the U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the commissioner that U.S. EPA will not object to issuance of the Part 70 permit modification, whichever is first, although the commissioner may approve the Part 70 permit modification prior to that time. Within ninety (90) days of the commissioner's receipt of an application under the minor Part 70 permit modification procedures or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later, the commissioner shall do any of the following:

(A) Issue the Part 70 permit modification as proposed.

(B) Deny the Part 70 permit modification application.

(C) Determine that the requested modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant modification procedures.

(D) Revise the draft Part 70 permit modification and transmit to the U.S. EPA the new proposed Part 70 permit modification as required by section 18(b) of this rule.

(7) The source may make the change proposed in its minor Part 70 permit modification application immediately after it files ~~such~~ **the** application. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision (6)(A) through (6)(C), the source must comply with both the applicable requirements governing the change and the proposed Part 70 permit terms and conditions. During this time period, the source need not comply with the existing Part 70 permit terms and conditions it seeks to modify. If the source fails to comply with its proposed Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions it seeks to modify may be enforced against it.

(8) The Part 70 permit shield under section 15 of this rule is not applicable to minor Part 70 permit modifications until after the commissioner has issued the modification.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor Part 70 permit modification processing:

(1) Group processing of modifications may be used only for those Part 70 permit modifications that meet the following requirements:

(A) The modifications meet the criteria for minor Part 70 permit modification procedures under subsection (b).

(B) The modifications are exempt from preconstruction or permit revision approval under 326 IAC 2-1.1-3.

(2) An application requesting the use of group processing procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit ~~which that~~ reflects the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that ~~such the~~ procedures be used.

(D) A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(E) Certification, consistent with section 4(f) of this rule, that the source has notified the U.S. EPA of the proposed modification. ~~Such The~~ notification need only contain a brief description of the requested modification.

(F) Completed forms for the commissioner to use to notify the U.S. EPA and affected states as required under section 18 of this rule.

(3) The notice provisions of section 17 of this rule shall apply to modifications eligible for group processing.

(4) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is earlier, the commissioner promptly shall notify the U.S. EPA, under section 18(a) of this rule, and affected states, under section 17(4) of this rule, of the requested Part 70 permit modifications. The commissioner shall send any notice required under section 18(b) of this rule to the U.S. EPA.

(5) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later.

(6) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(7) The Part 70 permit shield under section 15 of this rule is not applicable to modifications eligible for group processing until after the commissioner has issued the modifications.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting Part 70 permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring Part 70 permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. **The addition, renewal, termination, revocation, and revision of PAL provisions in accordance with 326 IAC 2-2.4 or 326 IAC 2-3.4 shall be considered significant.** Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would render existing Part 70 permit compliance terms and conditions irrelevant.

(2) Significant Part 70 permit modifications shall meet all requirements of this rule, including those for application, public participation, review by affected states, and review by the U.S. EPA, and availability of the permit shield as they apply to Part 70

permit issuance and Part 70 permit renewal. The commissioner shall complete review of the majority of significant Part 70 permit modifications within nine (9) months after receipt of a complete application.
(Air Pollution Control Board; 326 IAC 2-7-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1044; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 25. 326 IAC 2-2.5 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 **February 4, 2004**, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on new rules and amendments to 326 IAC 2.*

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 new rules and 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 Chris Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 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 Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.