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TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #03-332(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PERMIT BY RULE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for 326 IAC 2-10, Permit by Rule. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 2-10.

AUTHORITY: IC 13-14-9; IC 13-14-9.5.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

Sunset Legislation

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 326 IAC 2-10, permit by rule, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13 a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. 326 IAC 2-10 was first noticed for readoption in the first sunset rulemaking (LSA #00-44). Because a request and a basis for the request was submitted during the first comment period, 326 IAC 2-10 was not readopted in the first sunset rulemaking and must now go through the IC 13-14-9 rulemaking process.

Purpose of Rule and Explanation of Limited Policy Alternatives

Some Indiana sources have large potential to emit certain air pollutants but, in actuality, emit very little without needing to use air pollution controls. If this permit by rule were not available, sources with relatively low actual air emissions would be required to apply for and obtain a registration or permit to authorize operation and other approvals for construction or modification. There

are fees, reporting obligations, and other requirements associated with air permits that the department has determined are not necessary to assure that small sources comply with legal requirements and minimize their air impacts. IDEM has created a permit program, permit by rule, to allow these small sources to operate with a permit established specifically in a rule and not through issuance of a permit by IDEM, Office of Air Quality. The permit by rule establishes a permit program necessary for the operation of Indiana's permitting program.

Part of Indiana's permit by rule, 326 IAC 2-10-2 through 326 IAC 2-10-6, expired January 1, 2003, according to IC 13-14-9.5, sunset legislation. The section of the rule that establishes the program, 326 IAC 2-10-1, remains in effect until January 1, 2005. That section establishes the permit by rule program and provides that sources can limit their potential to emit, "by complying with the conditions of this rule". Because the remaining sections of the rule provide all of the regulatory guidance and compliance for these sources, a complete rule is needed for the continuation of the program. Therefore, rules should be adopted to allow the permit by rule provisions to continue. There are limited policy alternatives because the sources following 326 IAC 2-10 must be able to continue following the rules and not be in violation of federal and state law for operating without a permit.

The number of sources that are covered by 326 IAC 2-10 is not known since the rule provides that as long as a source can demonstrate compliance with the requirements of the rule upon request, it is covered by the permit by rule and is not required to possess a permit issued by the department. This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-10-1 and new sections 326 IAC 2-10-2.1, 326 IAC 2-10-3.1, 326 IAC 2-10-4.1, 326 IAC 2-10-5.1, and 326 IAC 2-10-6.1.

IC 13-14-9-4 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. 326 IAC 2-10 is a voluntary state only permit by rule program. A source can choose to be permitted by rule under 326 IAC 2-10 if it meets the applicability criteria. If a source is not permitted under 326 IAC 2-10, it may be required to hold a permit under an approved permit program. Additionally, the minor corrections in the draft rule impose no requirements.

Potential Fiscal Impact

If 326 IAC 2-10-1 expires, sources that are now permitted by 326 IAC 2-10 may be required to hold a permit issued by the department under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each type of permit.

If the rules are amended, the potential fiscal impact will not be assessable until the nature of the rule amendments being proposed is known.

If the rules are adopted as written in the draft rule, there will be no fiscal impact to the sources, the department, or citizens.

Public Participation and Work Group Information

No work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is necessary, please contact Pat Troth, Rules Development Section, Office of Air Quality at (317) 233-5681 or (800) 451-6021 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on 326 IAC 2-10, Permit by Rule. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) This rule is necessary for the continuation of the permitting program under 326 IAC 2.
- (2) The expiration of 326 IAC 2-10-2 through 326 IAC 2-10-6 allows the permit by rule program to exist without the necessary provisions regulating the applicable sources.
- (3) The administrative burden of issuing permits to all permit by rule sources is too great.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

Lori Kaplan

Commissioner

Indiana Department of Environmental Management

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 rule. Mailed comments should be addressed to:

#03-332(APCB)[326 IAC 2-10, Permit by Rule]

Pat Troth

c/o Administrative Assistant
Rule Development Section
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 East 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 Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 30, 2004.

Additional information regarding this action may be obtained from Pat Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 2-10-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-10-1 Limiting potential to emit

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. 1. (a) A source that would otherwise be required to have a permit under 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement as described in 326 IAC 2-9 may limit its potential to emit by complying with the conditions of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or 326 IAC 2-9 unless otherwise required by federal law.

(b) A source complying with this rule may at any time apply for a state operating permit under 326 IAC 2-6.1, Part 70 permit under 326 IAC 2-7, a FESOP under 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable. (*Air Pollution Control Board; 326 IAC 2-10-1; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063*)

SECTION 2. 326 IAC 2-10-2.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-2.1 Definitions

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. 2.1. The definitions in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 apply throughout this rule. (*Air Pollution Control Board; 326 IAC 2-10-2.1*)

SECTION 3. 326 IAC 2-10-3.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-3.1 Conditions

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. 3.1. The conditions of this rule that limit potential to emit are as follows:

(1) The source limits actual emissions for every twelve (12) month period to less than twenty percent (20%) of any threshold for a major source of the following:

(A) Regulated air pollutants.

(B) Hazardous air pollutants, as defined in Section 112 of the Clean Air Act.

(2) The source does not rely on air pollution control equipment to comply with subdivision (1).

(Air Pollution Control Board; 326 IAC 2-10-3.1)

SECTION 4. 326 IAC 2-10-4.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-4.1 Demonstration of compliance

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. 4.1. Not later than thirty (30) days after receipt of a written request by the department or U.S. EPA, the owner or operator shall demonstrate that the source is in compliance with the conditions provided in section 3.1 of this rule. The demonstration of compliance shall be based on actual emissions for the previous twelve (12) months and may include, but is not limited to, fuel or material usage or production records. No other demonstration of compliance shall be required. *(Air Pollution Control Board; 326 IAC 2-10-4.1)*

SECTION 5. 326 IAC 2-10-5.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-5.1 Compliance with other provisions

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. 5.1. (a) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided in section 1 of this rule.

(b) A source subject to this rule shall be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

(1) at any time the source is not in compliance with the conditions provided in section 3.1 of this rule; or

(2) the source does not timely or adequately demonstrate compliance with the conditions in section 3.1 of this rule as required under section 4.1 of this rule.

(Air Pollution Control Board; 326 IAC 2-10-5.1)

SECTION 6. 326 IAC 2-10-6.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-6.1 Enforcement

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; IC 13-30

Sec. 6.1. Any violation of this rule may result in administrative or judicial enforcement proceedings under IC 13-30-3 and penalties under IC 13-30-4, IC 13-30-5, or IC 13-30-6. *(Air Pollution Control Board; 326 IAC 2-10-6.1)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on March 3, 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 326 IAC 2-10-2.1, 326 IAC 2-10-3.1, 326 IAC 2-10-4.1, 326 IAC 2-10-5.1, 326 IAC 2-10-6.1, and readoption of 326 IAC 2-10-1.

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 readoption. 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 Pat Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 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) 233-6565. 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, Tenth Floor East, Indiana Government Center-North, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.