

Document: IC 13-14-9 Notice, **Register Page Number:** 27 IR 1311

Source: January 1, 2004, Indiana Register, Volume 27, Number 4

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

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 #03-333(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PERMIT BY RULE FOR SPECIFIC SOURCE CATEGORIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for 326 IAC 2-11, Permit by Rule for Specific Source Categories. 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 2-11.

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

Basic Purpose and Explanation of Limited Policy Alternatives

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 326 IAC 2-11, 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 2-11 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 2-11 was not readopted in the first sunset rulemaking and must now go through the IC 13-14-9 rulemaking process.

326 IAC 2-11 applies to gasoline dispensing operations, grain elevators, and sources that process or mill grain. It allows these types of sources to operate pursuant to a "permit by rule" if they limit their allowable emissions or "potential to emit" by complying with specified conditions. A source that complies with the requirements of this rule possesses a permit under the rule. 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.

Sections 1 through 4 were adopted in 1997; section 1 of this rule was amended in 1998 and will expire January 1, 2005. Sections 2 through 4 will expire on January 1, 2004. An extension of one year, pursuant to IC 13-14-9.5 is pending with the Governor, which would make all of the sections expire January 1, 2005.

The number of sources that are covered by 326 IAC 2-11 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 2-11. IDEM proposes no changes to these rules.

Limited policy alternatives exist because this rule will expire, pursuant to the sunset provision, either on January 1, 2004, or on January 1, 2005, if the Governor grants a one year extension. This rule has been extremely beneficial to the public and to businesses by providing a simple way to regulate sources whose air emissions are potentially large enough to require an operating permit but, in actuality, are quite low.

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 2-11 is a voluntary state only permit by rule program. A source can choose to be permitted by rule under 326 IAC 2-11 if it meets the applicability criteria. If a source is not permitted under 326 IAC 2-11, 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 2-11 expires, sources that are now permitted by 326 IAC 2-11 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 readopted with only the minor corrections indicated 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 2-11, Permit by Rule for Specific Source Categories. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) This rule will expire on January 1, 2004, or January 1, 2005, if extended by the Governor pursuant to IC 13-14-9.5, and is necessary to the operation of the permitting program under 326 IAC 2.
- (2) 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.
- (3) 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:

#03-333(APCB)[326 IAC 2-11, Permit by Rule for Source Specific Categories]

Susan Bem

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 Susan Bem, Rule Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 2-11-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-1 General provisions

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

Affected: IC 13-11-2; IC 13-15; IC 13-17; IC 13-30-3

Sec. 1. (a) This section contains general provisions applicable to all other sections in this rule.

(b) Definitions provided in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this rule.

(c) A source may limit its allowable emissions or potential to emit by complying with the conditions of the applicable section of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1 unless otherwise required by law. A source complying with this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the rule limits the source's allowable emissions or potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7.

(d) A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable.

(e) Before a source subject to this rule modifies its facility or operations in such a way that it will no longer comply with this rule, it shall obtain the appropriate approval from the commissioner under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-7, or 326 IAC 2-8.

(f) Not later than thirty (30) days after receipt of a written request by the department or the U.S. EPA, the owner or operator of a source subject to this rule shall demonstrate that the source is in compliance with limits in the applicable section of this rule by providing throughput records for the previous twelve (12) months.

(g) A source electing to comply with this rule shall comply with the following:

- (1) The source shall operate and properly maintain air pollution control devices at the source.
- (2) The source shall follow generally accepted industry work practices to minimize emissions of regulated air pollutants.
- (3) The source shall not discharge air pollutants so as to create a public nuisance.

(h) This section does not affect a requirement to comply with the provisions of any other applicable federal, state, or local requirement, except as specifically provided in this title.

(i) A source subject to this rule may 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 an applicable section of this rule; or
- (2) the source does not timely or adequately demonstrate compliance with the conditions in an applicable section of this rule.

(j) Any violation of this rule may result in administrative or judicial enforcement proceedings and penalties under IC 13-30-3.

(Air Pollution Control Board; 326 IAC 2-11-1; filed May 7, 1997, 4:00 p.m.: 20 IR 2316; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108)

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

326 IAC 2-11-2 Gasoline dispensing operations

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

Affected: IC 13-15; IC 13-17

Sec. 2. (a) This section applies to retail or commercial gasoline dispensing operations that meet each of the following conditions:

- (1) Meet the conditions specified in subsection (b).
- (2) Demonstrate compliance as specified in subsection (c).

(b) To limit potential to emit as provided in section 1(c) of this rule, the following conditions are applicable to sources depending on their location:

- (1) For sources located in Clark or Floyd County, the source:

- (A) fills its storage tanks by vapor-balanced fill;
- (B) has a Stage II vapor recovery system; and
- (C) dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline during an average month based on the last twelve (12) months.

- (2) For sources located in Lake or Porter County, the source:

- (A) fills its storage tanks by vapor-balanced fill;
- (B) has a Stage II vapor recovery system; and
- (C) dispenses less than one million three hundred forty-four thousand (1,344,000) gallons of gasoline during an average month based on the last twelve (12) months.

- (3) For all other sources, the source:

- (A) uses the splash method for filling storage tanks and dispenses less than six hundred eighty-eight thousand (688,000) gallons of gasoline during an average month based on the last twelve (12) months;
- (B) uses the submerged fill method for filling storage tanks and dispenses less than eight hundred thirty-three thousand (833,000) gallons of gasoline during an average month based on the last twelve (12) months;
- (C) uses the vapor-balanced fill method for filling storage tanks and dispenses less than one million two hundred eighty-two thousand (1,282,000) gallons of gasoline during an average month based on the last twelve (12) months; or
- (D) uses the fill vapor-balanced fill method for filling storage tanks, has a Stage II vapor recovery system, and dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline during an average month based on the last twelve (12) months.

(c) Sources electing to comply with this rule must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or the U.S. EPA, as follows:

- (1) The owner or operator of a gasoline dispensing source shall demonstrate compliance with subsection (b)(3)(A), (b)(3)(B), or (b)(3)(C), as applicable.
- (2) The owner or operator of a gasoline dispensing source subject to subsection (b)(3)(D) shall demonstrate compliance with subsection (b)(3)(D) and 326 IAC 8-4-6 subsections (a) through (d), (f), and (j) through (m) [326 IAC 8-4-6(a) through 326 IAC 8-4-6(d), 326 IAC 8-4-6(f), and 326 IAC 8-4-6(j) through 326 IAC 8-4-6(m)].
- (3) The owner or operator of a gasoline dispensing source subject to subsection (b)(1) or (b)(2) shall demonstrate compliance with subsection (b)(1) or (b)(2), as applicable, and 326 IAC 8-4-6.

(Air Pollution Control Board; 326 IAC 2-11-2; filed May 7, 1997, 4:00 p.m.: 20 IR 2316)

SECTION 3. 326 IAC 2-11-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-3 Grain elevators

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

Affected: IC 13-15; IC 13-17

Sec. 3. (a) This section applies to a grain elevator that receives and ships grain as follows:

- (1) Grain receiving by truck or rail and grain shipping by truck or rail.
- (2) Grain receiving by truck or rail and grain shipping by barge.
- (3) Grain receiving by truck or rail and grain shipping by ship.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, annual total throughput limits shall be equal to or less than the following:

- (1) For truck or rail grain receiving and truck or rail grain shipping, eleven million two hundred thousand (11,200,000) bushels.
 - (2) For truck or rail grain receiving and barge grain shipping, eight million (8,000,000) bushels.
 - (3) For truck or rail grain receiving and ship grain shipping, five million six hundred eighty thousand (5,680,000) bushels.
- (Air Pollution Control Board; 326 IAC 2-11-3; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2107)*

SECTION 4. 326 IAC 2-11-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-4 Grain processing or milling

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

Affected: IC 13-15; IC 13-17

Sec. 4. (a) This section applies to sources that process or mill grain, including the following:

- (1) Flour mills.
- (2) Dry corn mills.
- (3) Animal feed mills.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, the annual total throughput limits shall be equal to or less than the following:

- (1) For flour mills, one hundred fifty-four thousand five hundred twenty-six (154,526) bushels.
 - (2) For dry corn mills, one million sixty-three thousand two hundred fifty (1,063,250) bushels.
 - (3) For animal feed mills, eleven million two hundred thousand (11,200,000) bushels.
- (Air Pollution Control Board; 326 IAC 2-11-4; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2108)*

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., in 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 the readoption of 326 IAC 2-11-1, 326 IAC 2-11-2, 326 IAC 2-11-3, and 326 IAC 2-11-4.

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.