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## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **Proposed Rule** LSA Document #03-67

#### **DIGEST**

Adds 326 IAC 2-2.2 concerning clean unit designations in attainment areas, 326 IAC 2-2.3 concerning pollution control project exclusion procedural requirements in attainment areas, 326 IAC 2-2.4 concerning actuals plantwide applicability limitations in attainment areas, 326 IAC 2-2.6 concerning federal NSR requirements for sources subject to P.L.231-2003, SECTION 6, 326 IAC 2-3.2 concerning clean unit designations in nonattainment areas, 326 IAC 2-3.3 concerning pollution control project exclusion procedural requirements in nonattainment areas, and 326 IAC 2-3.4 concerning actuals plantwide applicability limitations in nonattainment areas. Amends 326 IAC 2-1.1-7 concerning permitting fees, 326 IAC 2-2-1 concerning definitions relating to PSD requirements, 326 IAC 2-2-2 concerning applicability of PSD requirements, 326 IAC 2-2-3 concerning requirements for control technology review, 326 IAC 2-2-4 concerning requirements for an air quality analysis, 326 IAC 2-2-5 concerning requirements relating to an air quality impact, 326 IAC 2-2-6 concerning requirements for increment consumption, 326 IAC 2-2-7 concerning requirements for additional analysis, 326 IAC 2-2-8 concerning source obligations, 326 IAC 2-2-10 concerning source information, 326 IAC 2-3-1 concerning definitions relating to emission offsets, 326 IAC 2-3-2 concerning applicability of emission offsets, 326 IAC 2-3-3 concerning applicable requirements, 326 IAC 2-5.1-4 concerning transition procedures, 326 IAC 2-7-10.5 concerning source modifications relating to Part 70 permits, 326 IAC 2-7-11 concerning administrative permit amendments, and 326 IAC 2-7-12 concerning permit modifications. Repeals 326 IAC 2-2.5. Effective 30 days after filing with the secretary of state.

#### **HISTORY**

First Notice of Comment Period: April 1, 2003, Indiana Register (26 IR 2473).

Second Notice of Comment Period: September 1, 2003, Indiana Register (26 IR 3962).

Notice of First Hearing: September 1, 2003, Indiana Register (26 IR 4030).

Change in Notice of First Hearing: December 1, 2003, Indiana Register (27 IR 905).

Date of First Hearing: January 7, 2004.

#### **PUBLIC COMMENTS UNDER IC 13-14-9-4.5**

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

#### **REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on September 1, 2003, at 26 IR 3962. By this notice, the Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

In addition, IDEM feels a third comment period is appropriate due to the high level of interest in the proposed rule. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#03-67(APCB) NSR Reform

Christine Pedersen

c/o Administrative Assistant

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Hand delivered comments will be accepted by the receptionist on duty at the Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (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, hand delivered, or faxed by March 22, 2004.

### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2003, through October 1, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

ALCOA Warrick Operations (ALCOA)  
American Electric Power (AEP)  
CASE Coalition (CASE)  
Cinergy Power Generation Services, LLC (CPG)  
Citizens Action Coalition of Indiana (CAC)  
DaimlerChrysler Corporation (DCC)  
Dominion (DOM)  
Eli Lilly and Company (ELC)  
Hoosier Environmental Council (HEC)  
Indiana Cast Metals Association (INCMA)  
National Starch & Chemical (NSC)  
Northern Indiana Public Service Company (NIPSCO)  
Partners for Pollution Prevention (PPP)  
Save the Dunes Council (SDC)  
Save the Valley (STV)  
Trinity Consultants (TRI)  
Valley Watch, Inc. (VWI)

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

#### **General Rulemaking Comments**

##### *Rulemaking effort*

*Comment:* We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. We urge IDEM to go further and recognize that the rule is expected to have beneficial effects in reducing air emissions through implementation of the clean unit test, PALs, and pollution control project exclusions as well as the actual-to-projected-actual emissions test. IDEM should adopt all elements of the federal rule. (CASE)

*Comment:* We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. (ALCOA)

*Comment:* We appreciate the efforts of the Office Air Quality to promulgate the federal NSR reform rules as quickly as possible. In addition, we generally support IDEM's direction of adopting the federal rules with few differences. (ELC)

*Comment:* We support IDEM's efforts to implement the federal reforms. We urge IDEM to expeditiously approve these rules and submit the revised rules as state implementation plan (SIP) revisions. (DOM)

*Comment:* We support IDEM's initiative to expeditiously incorporate the revisions to the U.S. EPA rules into the state regulations in an essentially unchanged fashion, except for those cases where existing state requirements necessitate the U.S. EPA NSR rules be structured to avoid anti-backsliding concerns. (AEP)

*Comment:* We support the December 2002 final rule, as well as IDEM's efforts to expeditiously revise its state implementation plan. (DCC)

*Response:* IDEM acknowledges the support and intends to proceed with the rulemaking expeditiously.

*Comment:* The rules should be incorporated by reference with a few issues dealt with through separate rulemakings if needed. We are concerned that straying from the identified requirements of the federal rule will result in a significant delay in the adoption and implementation of these reforms. There is no clear guidance from U.S. EPA regarding the latitude states have to stray from the specific provisions of the federal rule. Implementation of these reforms may be significantly delayed if U.S. EPA will not approve the rules. We support a two-phase approach: adoption of the federal rule without modification to insure federal approval, followed by adoption of any modifications believed to enhance the rule. (INCMA)

*Response:* IDEM is working with U.S. EPA to assure the revised rules can be approved into the SIP. U.S. EPA has informally

commented on the second notice, and IDEM has revised the language to address U.S. EPA concerns. U.S. EPA, Region V also sent the language to U.S. EPA Headquarters, since Indiana is one of the first states to submit revised rule language. Due to the extensive federal review prior to finalizing this rule, IDEM does not believe the state level changes will slow down the SIP approval process.

*Comment:* We believe it is premature for IDEM to proceed with this rulemaking because the Bush administration's NSR rollbacks are being challenged in court. 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. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* IDEM is monitoring the legal challenge. If the legal challenge results in changes to the federal rule prior to final adoption, IDEM will consider those changes in the state rulemaking. The December 31, 2002 federal rule revisions require states with SIP approved major NSR programs to submit SIP revisions to U.S. EPA by January 2, 2006. IDEM must continue moving forward with this rulemaking to assure compliance with that requirement.

#### *Conformity between federal and state NSR rules*

*Comment:* Significant variations between state and federal NSR regulations, and among various state programs, are problematic for efficient business planning, particularly for a company with operations in many states. Variations create potential confusion for the public who will not be able to rely on one set of rules. If the state NSR rules are different, there would be delays and possible confusion when using any U.S. EPA guidance on the new NSR reform rules. Interstate differences with NSR will create an uneven set of requirements and may affect important company decisions related to manufacturing capacity and ultimately the location of jobs in the U.S. We support uniformity in regulations at the state and federal levels to the maximum possible extent. We recommend that IDEM adopt rules that are consistent with the federal rules unless the differences are clearly justified by environmental reasons unique to Indiana. (DCC)

*Response:* Consistency in air permit regulations is important. Indiana has proposed to adopt all of the federal provisions with a few revisions to prevent backsliding of air quality. While there is consistency in major NSR programs, there is not consistency in the various minor NSR programs. Because the new major NSR provisions rely heavily on state and local minor programs, some variation is likely to occur. IDEM anticipates developing training materials for NSR to clarify the changes to the program.

#### *Equipment replacement provision*

*Comment:* We encourage IDEM to revise this proposal to include the elements of the Routine Maintenance Repair and Replacement rule revisions to the NSR program signed by U.S. EPA Administrator Horinko on August 27, 2003 within this rulemaking instead of placing them in a separate rulemaking that will lag this rulemaking by only a few months. We believe it would be efficient for IDEM to make those changes prior to taking this revision to the APCC in February 2004. We encourage IDEM to make those changes at this time and not wait. We do not believe the expense and time required for an additional rulemaking is justified. (AEP)

*Comment:* The rules as proposed are only based on the language of the final U.S. EPA NSR reform rule of December 31, 2002 and additional IDEM modifications. An integral part of the NSR reform effort includes the revisions and clarifications provided to the regulated community for routine maintenance, repair and replacement by the August 27, 2003 final U.S. EPA rule. This RMRR rule must be included in the IDEM rule as expeditiously as possible to provide the affected parties with the regulatory reforms needed to operate efficiently. We recommend IDEM include the provisions of the RMRR rule, as signed by the acting U.S. EPA administrator on August 27, 2003, in this rulemaking. (NIPSCO)

*Comment:* We encourage IDEM to incorporate by reference the language from the signed version of the amendments to 40 CFR 51.165 and 40 CFR 52.21, Prevention of Significant Deterioration and Non-attainment New Source Review: Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion. (CPG)

*Response:* The federal Equipment Replacement Provision (ERP) rulemaking, which was not published until October 27, 2003, was not included in the First Notice of this rulemaking, which was published on April 1, 2003. In order to properly include the ERP provision into this rulemaking, IDEM would need to republish a First Notice of Comment Period and begin the process over. In addition, IDEM and the public need time to review the new ERP regulation to evaluate its impact on air quality in Indiana. The current rulemaking, based on the December 31, 2002, U.S. EPA final rule, must continue as scheduled to assure that Indiana meets the January 2, 2006 requirement for a SIP submittal. There are several more phases of NSR Reform expected to be finalized in the *Federal Register* this year; it is not necessary to delay the parts already published in anticipation of future rules. IDEM has begun the public discussion on the ERP rule and will work with all interested parties on that issue in a second rulemaking.

#### *Federal criteria for approving alternatives*

*Comment:* In relation to federal criteria for approving alternatives, we encourage IDEM to begin with federal baseline language in rulemaking to gain acceptance and consider modifying language for the state later. (INCMA)

*Response:* Development of the draft rule language for the state rulemaking began by determining how the new federal language fit into the existing SIP approved rules. Changes are being recommended based on protecting air quality in Indiana and consistency with existing state programs. These changes have been discussed with U.S. EPA to assure they can be approved. U.S. EPA made it clear in the December 31, 2002 preamble that state and local agencies "have the freedom to customize their NSR program" as long

as they meet the requirements of Part 51 “with different but equivalent regulations.” (67 FR 80241, Section VII on p. 80241, col. 2 of the December 31, 2003 Federal Register)

*No increases in total emissions*

*Comment:* An underlying principle that must guide any proposed changes to Indiana’s NSR rules is that no change results in increased total 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:* IDEM agrees, and has made the adjustments to assure no backsliding in the quality of air in Indiana. For example, 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 the PSD program. In addition, IDEM is recommending a change to the retroactive designation of clean units because the federal provision would result in greater air emissions than the current state program in a manner that is not consistent with the goals of the CAA.

*SIP changes*

*Comment:* IDEM must ensure that SIP changes do not interfere with attainment of an air quality health standard. The Clean Air Act (CAA) prohibits modification of clean air programs in effect before the CAA Amendments of 1990 unless the modification results in equal or greater emission controls. The CAA also prohibits backsliding with regards to emission standards or limitations in SIPs. IDEM has stated that some of the rule changes could in fact result in some emission increases. This would be a violation of Sections 193 and 116 of the CAA. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* IDEM has maintained existing provisions or revised the new federal rules to prevent backsliding of air quality in Indiana. With the revisions that have been proposed, IDEM does not believe there will be an actual increase in emissions over what would have been allowed under the current state rules. Under some of the new provisions, such as the PAL, there may be a decrease.

*Title V revision procedures*

*Comment:* IDEM proposes specific revision procedures to address clean unit designations, listed PCPs, non-listed PCPs and PALs. We support IDEM’s approach to use minor modification procedures for clean units and listed PCPs and to use significant modification procedures for non-listed PCPs and PALs. (CASE) (ALCOA)

*Response:* IDEM agrees that these approaches make sense.

*Federally enforceable*

*Comment:* We believe the phrase “federally enforceable” should never be used in the Indiana rules because it is inconsistent with three significant court rulings in 1995 that found U.S. EPA had not provided adequate justification for requiring federal enforceability. U.S. EPA provided no new justification for using federal enforceability in response to the court rulings in the preamble to the final rules. Instead, U.S. EPA only offers that the 1995 court rulings held that it was impermissible to require federal enforceability as an element of defining “potential to emit”, and that other uses of the concept are still permissible. This approach ignores the merits of the 1995 court rulings.

We believe it does not jeopardize Indiana’s ability to obtain SIP approval for its NSR programs. Indiana should not agree to include the phrase in its rules unless U.S. EPA justifies the use of federal enforceability in each instance where it is used in the major NSR rules. (ELC)

*Response:* The court rulings removed the term “federally enforceable” from the definition of potential to emit. The federal rules that are the subject of this rulemaking include the term “federally enforceable” and were promulgated after the lawsuits. It appears that U.S. EPA considered the lawsuit when drafting the revisions because the term “enforceable as a practical matter” is also included along with nearly every new reference to the term “federally enforceable”.

IDEM has removed the term “federally” from uses of the term “federally enforceable” in the definitions of “allowable emissions” and “potential to emit” to be consistent with the PSD definitions and because court decisions in 1995 vacated the requirement (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)). We do not have the authority to remove it from anything else.

*Compliance consequences if actual emissions exceed projected emissions*

*Comment:* We requested that the rule provide that BACT be retroactive to the date of the actual physical change, as opposed to BACT at the time of discovery. IDEM’s response to this comment was non-responsive. It simply said this was an implementation and compliance issue that did not need to be addressed in the rule. That is not correct. The rule must provide guidance to both the regulated entity and to IDEM so when enforcing its requirements the rule actually provides BACT at the time of the physical change or BACT at the time of discovery that BACT should have applied earlier. It is not acceptable for IDEM’s Office of Enforcement to pick and choose what it will do. The rule must give direction for what IDEM’s Office of Enforcement is to do.

We requested that the rule include the ramification or a list of the actions IDEM may take when a facility reports an exceedence of its projected actual emissions. IDEM’s response was that the exceedence might be referred to enforcement. The rule needs to specifically state all the different actions IDEM may take and the basis for determining which action to take. For example, one action could be to enforce. But the rule should state what conditions make enforcement appropriate. Alternatively, an appropriate action

could be to allow a specified period of time for the permittee to retest or provide a written report to explain other causes of the exceedance that are not related to the physical change made. (INCMA)

*Response:* IDEM cannot allow a source to apply BACT retroactive to the date of the physical change. The November 17, 1998, U.S. EPA memo titled "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements", states that the source must comply with the BACT or LAER determination made at the time a source goes through NSR permit review. Thus, if a source violates NSR in 2003 and applies for a permit in 2005, whatever technology is BACT or LAER in 2005 will be required in the permit.

Any violation of the permitting requirements will be handled by IDEM's Office of Enforcement in accordance with IC 13-30-3-1. The permitting rules contained in 326 IAC 2 explain the permitting procedures, but they are not designed to describe the enforcement procedures or specific enforcement consequences. Enforcement may be appropriate for any violation depending on many site specific issues thus making it improper to address in a rulemaking. Therefore, this will not be addressed in the NSR permit rules.

#### *BACT and LAER clarification*

*Comment:* Clarification should be provided as necessary in individual locations within the proposed new rule language that BACT applies in attainment areas and LAER applies in nonattainment areas. It should be acknowledged that a unit that meets LAER more than meets the requirements of BACT. For a unit seeking clean unit designation that meets LAER in an attainment area, it should be clearly acknowledged that such a unit more than satisfies the requirements for a clean unit designation. (NIPSCO)

*Response:* The applicability of the PSD requirements in 326 IAC 2-2 in attainment or unclassified areas is stated in 326 IAC 2-2-2(b). As part of the PSD rules, the BACT requirements in 326 IAC 2-2-3 are understood to apply in attainment or unclassified areas. Likewise, 326 IAC 2-3-2(a) indicates that the emission offset rules of 326 IAC 2-3 apply in nonattainment areas, therefore the LAER requirements in 326 IAC 2-3-3(a)(2) apply in nonattainment areas. Further clarification in the rule is unnecessary.

IDEM agrees that a unit that received a permit requiring LAER should continue to qualify for a clean unit designation when its area is redesignated attainment. The phrase "or LAER" has been added in several subsections of 326 IAC 2-2.2-1 and 326 IAC 2-2.2-2 that were not included in the federal rule to clarify this intent.

#### *Clarification of references to P.L. 231-2003, SECTION 6*

*Comment:* We believe it would be appropriate to provide a clarification or description of P.L. 231-2003, SECTION 6, and where copies may be obtained. (NIPSCO)

*Response:* For clarification, IDEM has changed the rule title to read, "Federal NSR Requirements for Sources Subject to P.L. 231-2003, SECTION 6, Endangered Industries". In addition, the draft rule incorrectly identified this public law as "P.L. 231-0003"; this has been corrected to "P.L. 231-2003".

P.L. 231-2003, SECTION 6, passed by Indiana legislators in 2003, prohibits the environmental boards from adopting a new rule before July 1, 2005, that would require certain industries to comply with standards of conduct that exceed federal standards. In the draft rule, 326 IAC 2-2.6 has been added to comply with this legislation.

This new Indiana law can be found on the internet at [http://www.in.gov/legislative/pdf/acts\\_2003.pdf](http://www.in.gov/legislative/pdf/acts_2003.pdf). It will also be available in the Indiana Legislative Counsel Acts 2003 when published. IDEM will provide copies upon request.

#### *Compliance certifications under Nonrule Policy Document*

*Comment:* IDEM has indicated that it plans to revise the Nonrule Policy Document regarding Title V annual compliance certifications to require that a permittee include exemptions from NSR in its annual certification. IDEM needs to provide that language in the rules so that stakeholders can review and have input on this change. (INCMA)

*Response:* IDEM does not believe it is necessary to revise the rule. The language in 326 IAC 2-7-6(5)(C)(v) already states "Such other facts as the commissioner may require to determine the compliance status of the source." IDEM inspectors need this information to verify compliance. IDEM will provide clarification in the Annual Compliance Certification Non-Rule Policy Document. When the Non-Rule Policy Document is revised, there will be an opportunity for public review and comment.

#### **Fees**

*Comment:* We support the idea that IDEM should be able to collect fees for new review functions created by the NSR reform rules, such as a technology review to obtain a clean unit designation or establishing PAL permits. In addition, we recognize the difficulty of developing fair and equitable fee rates that will enable IDEM to collect some funds to offset its expenses. However, we believe the proposed fees for establishing a PAL are too high. We recognize that establishing PAL permits can be resource intensive. But the idea that establishing a PAL permit for a complex manufacturing facility is automatically a resource intensive activity is too simplistic. PAL fees should not reflect the complex regulatory requirements already applicable to a facility. We recommend either the emission fee rate in dollars per ton be lower or the PAL fees be based on the number of emission sources that have to be evaluated and monitored. In the alternative, the rules could establish an overall cap for fees, such as \$50,000.

In addition, the proposed rules appear to impose the same fees when a PAL is reestablished after 10 years. Although the PAL rules call for a reevaluation of the PAL levels when reissuing a PAL permit, the level of effort to conduct this review will not be as extensive. The fees for reestablishing a PAL permit should be significantly lower than establishing the permit. (ELC)

*Comment:* The fee provisions for a PAL are too high. At \$40 per ton, this would discourage companies from applying for a PAL. The fee should be lowered or adjusted to less than \$40,000 per pollutant cap if a source requests a PAL for more than one pollutant. (INCMA)

*Response:* After further review, IDEM believes that a maximum fee of \$40,000 is reasonable. The language in 326 IAC 2-1.1-7(3)(F)(iii) has been changed to reflect this.

There is no requirement in the rules for a renewal fee for a PAL. Major sources do pay annual operating fees which should cover the cost of reevaluating a PAL at the end of a permit term.

#### **Attainment and unclassifiable areas**

*Comment:* The proposed revisions in 326 IAC 2-2-2(b) reference attainment and unclassifiable areas as specified in sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act. The proposed language shows the deletion of the current reference to the listing of attainment and unclassifiable areas in 326 IAC 1-4. This is inconsistent with the proposed language of 326 IAC 2-2-2(g) which retains the reference to 326 IAC 1-4 for nonattainment areas, not references to the Clean Air Act. We would appreciate a clarification on why the references to the CAA are used for the attainment/unclassifiable portions while the nonattainment area references are to 326 IAC 1-4. (NIPSCO)

*Response:* IDEM agrees that the reference regarding nonattainment areas should be 326 IAC 1-4, not the CAA. This change has been made in 326 IAC 2-2-2(b).

#### **Annual emission information**

*Comment:* In 326 IAC 2-2-8(b)(4) and 326 IAC 2-2-8(b)(5), we question the need to have the owner or operator provide the listed annual emission information within 60 days of the end of the year. The information is included in the annual emission statement that is provided by the owner or operator to IDEM as specified in the schedule in the emissions reporting rule. Submittal of the information in the time period listed in this proposed rule is unnecessarily in advance of the annual emission statement submittal deadline and duplicative of the efforts and information provided in the annual emission statement. We recommend the submittal deadline proposed in this provision be changed to coincide with the deadline of the emission reporting rule to prevent imposition of an unnecessary early reporting burden on the regulated community. (NIPSCO)

*Response:* The reports required by the source obligation sections of 326 IAC 2-2 and 326 IAC 2-3 are specific to the modification. The source obligation requires the reports to be submitted within 60 days of the end of the calendar year. This reporting date is from the new federal rules at 40 CFR 51.166(r)(6) and 40 CFR 52.21(r)(6). A separate state rule, the emission reporting rule at 326 IAC 2-6, applies to the entire source and requires the annual emission statements on July 1 of each year. The scope of the NSR rulemaking does not allow for changes to be made to the emission reporting rule through this rulemaking.

#### **Hydrogen fluoride**

*Comment:* We recommend that Indiana's rules include explicit language to ensure there is no confusion about whether hydrogen fluoride should be excluded from the emission estimates for fluorides. 326 IAC 2-2-1(xx)(L) should be amended to read, "(L) Fluorides (**excluding hydrogen fluoride**): three (tons per year);"

In addition, we recommend hydrogen fluoride should be excluded from the ambient impact analysis for fluorides that is required to determine whether preconstruction monitoring and other ambient impacts are needed. 326 IAC 2-2-4(b)(2)(A) should be amended to read: "(L) Fluorides (**excluding hydrogen fluoride**): 0.25 µg/m<sup>3</sup>, 24-hour average;" (ELC)

*Response:* IDEM recommends that the rule continue to regulate the hazardous air pollutants that are specifically listed under the definition of "significant" in 326 IAC 2-2-1(xx). U.S. EPA has apparently chosen to delete hydrogen fluoride from the list of pollutants regulated by the PSD program because it will also be regulated by a NESHAP under Section 112 of the Clean Air Act. One of the uses of this highly corrosive acid is to etch glass. Indiana's PSD program regulates fluorides, including hydrogen fluoride, at major sources or modifications if emissions are above three tons per year. Section 112 does not typically regulate pollutants at levels less than ten tons per year. Hydrogen fluoride is a colorless gas that can cause severe respiratory damage with acute exposure and irritation and congestion of the nose, throat, and bronchi at low, chronic levels of exposure. IDEM has consistently recommended that the PSD program continue to regulate the specifically listed toxic air pollutants including, among others: asbestos, beryllium, mercury, and fluorides. Therefore hydrogen fluoride has not been excluded from fluorides in 326 IAC 2-2-1(xx)(L) and 326 IAC 2-2-4(b)(2)(A).

#### **Definitions**

##### *Baseline actual emissions and projected actual emissions*

*Comment:* The definitions of "baseline actual emissions" in 326 IAC 2-2-1(e) and 326 IAC 2-3-1(d), and "projected actual emissions" in 326 IAC 2-2-1(rr) and 326 IAC 2-3-1(mm), both include language intended to address emissions from malfunctions, startups, and shutdowns if affected by a proposed project. The wording of these provisions could be clarified as follows:

- 326 IAC 2-2-1(e)(1)(A) and 326 IAC 2-2-1(e)(2)(A) should read:  
(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 **are affected by** affect the project.
- 326 IAC 2-2-1(rr)(2)(A)(ii) should read:
    - (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and
  - 326 IAC 2-3-1(d)(1)(A) and 326 IAC 2-3-1(d)(2)(A) should read:
    - (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 **are affected by** affect the project.
  - 326 IAC 2-3-1(mm)(2)(A)(ii) should read:
    - (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and
- (ELC)

*Response:* IDEM agrees that these emissions need only be included as they are affected by the project and has made appropriate changes in the draft rule. However, U.S. EPA has indicated that use of the phrase “to the extent quantifiable” would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase “to the extent quantifiable” from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).

*Clean unit*

*Comment:* The “clean unit” definition in 326 IAC 2-2-1(m) is unclear because it does not clearly identify if the unit has to meet all three of the items in 326 IAC 2-2-1(m)(1), or only one of 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), or 326 IAC 2-2-1(m)(1)(C), or if it only needs to meet one of the requirements of 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3). Clearer language would be appreciated. (NIPSCO)

*Response:* IDEM has adopted the definition of “clean unit” from the federal regulations at 40 CFR 51.166(b)(41), and has kept it unchanged. The format of this definition in 326 IAC 2-2-1(m) and 326 IAC 2-3-1(j) is the preferred format of the Legislative Services Agency (LSA) which controls this type of editing. IDEM will take this opportunity to clarify that a clean unit must meet one of the three provisions, 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3), because the term “one of the following” is used at the subsection level. To meet the requirements in subdivision 326 IAC 2-2-1(m)(1), the clean unit must meet all three of the items, 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), and 326 IAC 2-2-1(m)(1)(C), as indicated by the use of the term “and” within 326 IAC 2-2-1(m)(1).

*Comment:* In 326 IAC 2-2-1(m)(1)(B), it would be helpful if this language was more specific regarding the compliance with BACT or LAER. Since BACT and LAER vary over time, a clarification regarding the BACT or LAER at the time of submittal of the application is recommended. (NIPSCO)

*Response:* The phrase in 326 IAC 2-2-1(m)(1)(B), “...is complying with BACT or LAER requirements...”, refers to the BACT or LAER requirements from the major NSR permit that requires compliance with BACT or LAER that is referred to in 326 IAC (m)(1)(A). IDEM has made a change to the language in 326 IAC 2-2-1(m)(1)(B) to clarify this meaning. IDEM also made a parallel change to the definition of “clean unit” in 326 IAC 2-3-1(j)(1)(B).

*Net emissions increase*

*Comment:* What was the justification for adding the language that an increase or decrease in actual emissions is creditable only if the increase or decrease occurs within a reasonable period as determined by the department? What are the criteria that will be used to establish a reasonable time? (INCMA)

*Response:* This was a mistake made when incorporating federal rule language from 40 CFR 51.166(b)(3)(iii)(a) into the state rule format. The reasonable period is the contemporaneous period provided in 326 IAC 2-2-2(jj)(2). IDEM has removed that particular language from the draft rule.

*Pollution control project*

*Comment:* The language in 326 IAC 2-2-1(ll) at the end of the third sentence “...through the PCP.2-2.3-1(c)(1).” is confusing. Was it intended to say “...through the PCP provisions of 326 IAC 2-2.3-1(c)(1).”? (NIPSCO)

*Response:* IDEM intended the language in the third sentence of 326 IAC 2-2-1(ll) to read, “...to reduce emissions through the PCP.” IDEM has removed the rule cite, “2-2.3-1(c)(1)”, at the end of the sentence because it was a typographical error.

*Regulated NSR pollutant*

*Comment:* IDEM states that it is modifying the definition of “regulated NSR pollutant” to include asbestos, beryllium, mercury and vinyl chloride. We object to inclusion of these pollutants in the federally enforceable section of the Indiana’s PSD program because it is prohibited by the Clean Air Act (CAA). Section 112(b)(6) of the CAA clearly prohibits regulation of the pollutants IDEM proposes to regulate under the PSD program, each of which is a hazardous air pollutant listed in CAA § 112(b). While Section 116 of the Clean Air Act provides that nothing prohibits a state from adopting and enforcing provisions that are more stringent than

federal law, it does not authorize IDEM to make any state law it chooses federally enforceable, particularly where such is expressly prohibited by Section 112(b)(6). If IDEM wishes to regulate these pollutants, it must do so as a matter of state law only and not submit this aspect of the regulations for SIP approval. If IDEM wishes to obtain SIP approval for the regulation of these pollutants, it must show that such regulation is required to attain or maintain compliance with a NAAQS and that it does not conflict with the express prohibition under Section 112(b)(6). (CASE) (ALCOA)

*Response:* IDEM disagrees that the state program cannot include asbestos, beryllium, mercury and vinyl chloride. In addition, IDEM proposes to continue to regulate hydrogen fluoride with fluorides. When U.S. EPA removed them in the 1990 CAA Amendments, it allowed states to continue to regulate them (refer to March 11, 1991 John Seitz memo titled “New Source Review (NSR) Program Transitional Guidance”). This is not a change proposed in this rulemaking because these pollutants have always been included in the Indiana program. In addition, these pollutants were included in the Indiana program when U.S. EPA approved Indiana’s PSD permitting rule into the state implementation plan on March 3, 2003. Therefore, the state rules concerning these pollutants are federally enforceable.

*Comment:* Under Indiana Code 13-14-9-4, IDEM is required in a notice of second public comment period to identify the environmental circumstance or hazard that dictates the imposition of a requirement that is not imposed under federal law and to provide examples where the federal law is inadequate to provide that protection along with the estimated fiscal impact and benefits. IDEM is also required to describe the availability of material relied upon. IDEM did not provide this required information regarding its imposition of an additional requirement to include asbestos, beryllium, mercury and vinyl chloride under the NSR rules. (INCMA)

*Response:* IDEM disagrees that this information was required with this rulemaking. These pollutants were already in the existing SIP-approved rule. Retaining them does not create a new requirement nor does it create an additional fiscal impact, therefore this information did not need to be submitted with this rulemaking. In addition, not including them in this rulemaking would make Indiana’s air quality program less protective of human health by eliminating provisions concerning pollutants that are well understood to be among the most toxic and that have been regulated by U.S. EPA as hazardous air pollutants for years.

*Comment:* In 326 IAC 2-2-1(uu)(1), the language is vague and needs clarification. It appears the intent of this subdivision is to include constituents or precursors of the pollutants for which a national ambient air quality standard (NAAQS) has been promulgated by U.S. EPA. The following language is recommended to provide this clarification consistent with the presumed intent:

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

*Response:* The language was taken from the federal rules at 40 CFR 51.166(b)(49) and 40 CFR 52.21(b)(50). IDEM prefers to follow the federal definitions where possible and does not feel that clarification is necessary in this case. The use of the term “the pollutants” in the second half of the sentence in 326 IAC 2-2-1(uu)(1) refers to “any pollutant for which a national ambient air quality standard has been promulgated” from the first part of the sentence; therefore, it is clear that the subdivision includes constituents or precursors of the pollutants for which a national ambient air quality standard has been promulgated.

*Comment:* The provision in 326 IAC 2-2-1(uu)(5) is unclear. The inclusion of the cross reference to “any pollutant listed in subsection (xx)” is a circular reference because 326 IAC 2-2-1(xx)(1)(V) refers to “Any regulated NSR pollutant”, the very term 326 IAC 2-2-1(uu)(5) is attempting to define. Because this is a deviation from the federal language, we recommend IDEM not deviate from the federal language. If IDEM insists on deviating from the federal language, it should do so carefully and consistently. (NIPSCO)

*Response:* IDEM agrees that the reference is circular and has changed the language to correct the problem. This is a deviation from the federal language for the definition of “regulated NSR pollutant” because IDEM has chosen to continue to regulate asbestos, beryllium, mercury, and vinyl chloride to prevent backsliding. This portion of the definition is necessary in order to clarify this intent. The reference in 326 IAC 2-2-1(uu)(5) has been changed to “subsection (xx)(1)(A) through subsection (xx)(1)(U)”.

### **Applicability Test**

#### *Real emissions increase test as applied to increased utilization*

*Comment:* On the issue of real emissions increase test as applied to increased utilization, IDEM responded that it believes that the new basic applicability test focuses on “real emissions increases” and that many of the proposed modifications will now only be subject to the minor NSR program. IDEM has not addressed, in its comments or in the rules, how it plans to review “increased utilization” issues that involve collateral equipment. In the past, IDEM has assumed that any increases in emissions were caused by the modification. Does IDEM now propose to allow the source to make this determination and not to impose any assumptions? Related to the move to an actual to projected actual emissions applicability test, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (INCMA)

*Response:* There have been no changes to the rule or policy regarding increased utilization. The current analysis method for units where the increased utilization occurs is actual to future actual. Under the new rules, the past actual to projected actual will apply



to the unit being modified as well as the units that are affected by increased utilization. For the most part, increased utilization is analyzed when the modification to an emission unit causes an increase in efficiency. This is generally when an increase in utilization of other emission units occurs.

In addition, U.S. EPA is working on NSR reform to address debottlenecking and expects to publish a proposed rule this year.

*Actual to projected actual emissions applicability test*

*Comment:* We strongly support the move to an “actual to projected actual” emissions applicability test. (NSC)

*Response:* IDEM acknowledges the comment.

*Comment:* We oppose the proposal to allow the “actual-to-potential” emissions applicability test to be replaced with an “actual-to-projected-actual” applicability test. 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. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* The actual to projected actual test focuses on realistic increases in emissions. IDEM does not believe adopting the new applicability test will result in backsliding on air quality. The actual to potential test assumes the unit will operate at its maximum capacity 24 hours a day, 365 days a year, which is rarely the case. This method often results in overestimating the emissions increase for a particular project. If a source chooses to use the actual to projected actual test and determines the modification is exempt from major NSR review, they are still required to comply with the minor NSR and Title V program requirements. For instance, if there are projects that were not otherwise approved in a permitting process, then the source will include a list of the changes in the Title V annual compliance certification. IDEM will have this opportunity to review the projected actual emissions. If actual emissions turn out to be greater than predicted by the source, IDEM will take appropriate steps including the application of the correct permit requirement.

Additionally, sources are required to maintain emissions data of sufficient accuracy for the purpose of determining an emissions unit’s post-change emissions. Electric utility steam generating units must report this information to the reviewing agency within 60 days after the end of the year. Non-electric utility steam generating units must report increases in post-change annual emissions when they exceed the baseline actual emissions by a significant amount and it differs from the projections that were calculated before the change. This information is also available for examination by the general public.

The actual to potential test is still available and if the source chooses to use it, they will be exempt from the record keeping and reporting requirements of the actual to projected actual applicability test.

*Baseline determination*

*Comment:* We oppose the “look back” provision of the Bush NSR rollbacks which would allow sources to choose their own 24-month baseline period from the previous ten years. Such a provision would allow for increases in emissions because the source could choose the most polluting 24-month period as its baseline. (CAC) (HEC) (SDC) (STV) (VWI)

*Comment:* We strongly support the look-back period of 10 years and agree with the federal review of a reasonable business cycle. (NSC)

*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 that is representative of normal source operations for non-EUSGU’s. U.S. EPA believes ten years is a fair and representative time frame for encompassing a normal business cycle. IDEM has a long history of implementing the current procedures for establishing past actual emissions. Emissions are directly affected by production rates which are in turn affected by market trends or cycles. IDEM has seen very long cycles in sectors such as automobile assembly and foundry operations. These cycles are often based on the specific product made at a specific plant. Unless there is an increase in capacity at a plant, emissions increases are more often the result of increased sales than minor changes within the plant. The proposed rule is intended to more realistically assess whether a change will cause an emissions increase. Sources must have data to support the units operation in order to use the look back period. The past actual emissions are adjusted to reflect decreases that resulted from new regulatory requirements. The assessment of projected future actual then focuses on emission increases caused by the project. IDEM proposes to incorporate the new applicability test into the state program.

## **Clean Units**

*Basis for clean unit designations*

*Comment:* IDEM is proposing a provision less stringent than the federal rule by making clean unit designations more difficult to obtain. This discourages units from obtaining clean unit status and thereby could limit the air quality benefits intended in the federal rule. The methodology of the federal rule should be followed, including the federal methodology for BACT determination. (NIPSCO)

*Comment:* We are concerned with IDEM’s proposed changes and we request that IDEM adopt U.S. EPA’s approach for determining the level of control for clean units. IDEM’s proposal to perform a case-by-case BACT/LAER analysis creates a significant burden for clean unit applicants, as well as the permitting agency, while creating little added environmental benefit. It is unlikely that a case specific BACT or LAER analysis will result in any significant difference than using an average of, or at least

as stringent as recent decisions. IDEM's proposed approach creates a time-consuming and labor intensive process while U.S. EPA's approach is more streamlined and still provides assurances for having only well-controlled sources designated as clean units. (DCC)

*Response:* The Federal rule provides the following mechanisms for obtaining clean unit status:

(1) An emission unit that obtained a major NSR permit in the past ten years may use that BACT or LAER determination as the basis for being designated a clean unit. The designation is good for ten years from the date the control technology becomes operative on the emission unit to be designated as clean unit, or three years from the issuance date of the major NSR permit, whichever is earlier.

(2) An emission unit that receives a major NSR permit in the future may use that BACT or LAER determination as the basis for being designated a clean unit for ten years.

(3) An emission unit equipped with air pollution control technology including pollution prevention (with the qualifying investment in technology) that did not receive a major NSR permit in the past can use the technology review procedures provided by the rule as the basis for being designated a clean unit. The designation is good for a period starting from the date the minor NSR permit designating the clean unit is issued to the end of the 10 year period from the date the control technology was installed.

(4) A future emission unit that is not subject to major NSR can use the state's minor NSR process and the technology review procedures provided by the rule as the basis for being designated as a clean unit. The designation is good for ten years from the date the minor NSR permit is issued, or the date the control technology becomes operational, whichever is later.

IDEM proposes no changes to the process of designation of clean unit for the first two mechanisms for emissions units that followed the normal major NSR review process to establish BACT or LAER requirements.

IDEM is proposing to change the control technology review process for emission units that would receive clean unit designation through the minor NSR process. The federal process for attainment areas requires a review of the RACT/BACT/LAER Clearinghouse for determinations made at the time the emissions unit commenced operation and five years prior to that time. The clean unit designation is then based on the average of those determinations. The federal process for nonattainment areas requires a similar review of the Clearinghouse, with the designation being based on any one of the five best performing similar sources. This is significantly less stringent than how a BACT or LAER determination would have been made at that time. A BACT determination begins with the presumption that BACT is the most stringent emission level found during review. While a less stringent level of control can sometimes be justified, it is clear that an average is always going to be a less stringent limit than the best. LAER is defined as the most stringent level of control achieved by similar sources. Basing a designation on any of five is clearly less stringent than the best. In addition, review of the Clearinghouse is only part of a BACT or LAER determination. IDEM checks the information contained in the clearinghouse against the actual performance of the control technologies used for various emissions unit. IDEM takes into account additional factors such as if an emissions unit is performing significantly better than the emission limit. IDEM has found emissions units that have not achieved the emission limit listed in the Clearinghouse and takes those into account as well. IDEM also uses information collected by the U.S. EPA as they develop National Emissions Standards for Hazardous Air Pollutants. This information is usually more rigorous and complete than information contained in the Clearinghouse. Other sources of information are often supplied by applicants or become known during the public process. Emission units qualifying for designation by virtue of their previous major NSR, BACT or LAER determinations went through this type of review.

IDEM proposes two changes to address the technology review process. First, the technology review process should be the same as provided under the major NSR review rules. These are existing, proven processes that are familiar to the public, applicants, and the agencies. A new unit seeking clean unit designation would be treated the same whether it was receiving a permit under the major or minor NSR programs. The second change is to base all designations made through the minor NSR process on current technology review information. IDEM would not attempt to perform a rigorous control technology review based on information that may or may not have been known in the past. It is difficult, if not impossible, to reconstruct the entire set of information that would have been available in the past. Also, the technology review of an emission unit built eight years ago would require establishing information from as long as thirteen years ago. Control technology requirements can change dramatically over a thirteen-year period. Some of the best technologies are rather mature. Sources that capture all VOC emissions and destroy them in some form of thermal oxidation would be only slightly affected by the difference between the federal process and IDEM's proposal. However, sources of NOx could be treated significantly different under the two processes. The federal technology review process for minor sources provides no benefit to air quality compared to IDEM's proposal.

IDEM has not identified any project that used clean technology in the past in order to take advantage of the clean unit test. On the whole, designations based on current information are going to be cleaner than those based on only old and partial information. An emissions unit would be treated as a clean unit for ten years after the designation.

*Comment:* We appreciate IDEM's position that units for which a clean unit designation is requested be required to meet BACT or LAER. We also appreciate IDEM's position that this BACT/LAER requirement be met with a "top-down" approach rather than an allowance for averaging BACT/LAER limits. We strongly support these requirements because they will help ensure that these units are adequately controlled. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* IDEM agrees that this change from the federal provisions will help ensure that the clean units are adequately controlled and promote greater air quality benefit.

*Physical or operational characteristics*

*Comment:* We agree that it is appropriate for IDEM to clarify what might be considered a physical or operational characteristic that formed the basis for a BACT or LAER determination. However, IDEM should clarify in its response to comments or preamble explanation of the rule that there may be cases in which there are no additional physical or operational characteristics beyond the BACT or LAER determination that need to be specified in the permit. If a permit's BACT or LAER determination is detailed, the permit terms should be sufficient to establish clean unit status. When physical or operational characteristics do need to be specified, we agree with IDEM's indication in the preamble that any one of these or some other characteristic proposed by the permittee may be appropriate and that "redundant" characteristics should not be imposed. (CASE)

*Response:* IDEM agrees that a well-written BACT or LAER determination should be detailed and should specify sufficient permit terms to establish clean unit status. IDEM included the provision in the rule to ensure that there would not be confusion when such provisions are included in permit terms and conditions for clean units. IDEM does not intend to impose redundant characteristics. The intent of the provision is to clarify in the rule that something beyond a pound per hour or pound per ton or parts per million limit will be necessary to establish the clean unit characteristics. IDEM currently takes into account the proposals from the applicant regarding various characteristics that can influence the BACT or LAER permit terms and conditions and will continue to do so.

*Comment:* We request that IDEM clarify the form that the clean unit designation "terms" in the permit will take. Under the regulatory language, the Title V permit is required to specify the conditions of maintaining the clean unit designation. Specifically, it must include any physical or operational characteristics that formed the basis for the BACT or LAER determination. We are concerned that the proposed options of potential emissions, production capacity or throughput could be viewed as being affected by a project even though a plant does not intend to exceed the characteristics as listed in the permit. We do not believe the source should lose its clean unit designation unless it actually deviates from the operational characteristic listed in the permit. This issue can be addressed by giving a source the option of one of the following two approaches, which we believe are consistent with IDEM's regulations:

(1) If a plant wishes to accept a physical or operational characteristic as an actual, enforceable limitation on its operations, it may do so. Future projects at the clean unit that may affect its capabilities relative to these characteristics would not be considered to have altered the characteristics because the plant would remain subject to the limitations in the permit. If the plant wishes to exceed these limitations, a permit revision would be required.

(2) Alternatively, a plant can accept as conditions for maintaining the clean unit designation the physical or operational characteristics determined by IDEM. The permit would state that, if the plant decides to implement a change that would alter one of these characteristics, the clean unit designation would no longer apply and the source would become subject to the basic actual-to-projected-actual test that applies to all existing units. No permit revision would be required because the permit would already state the consequences of altering the designated physical or operational characteristics.

(CASE)

*Response:* This is an implementation issue. IDEM will work with the owners and operators of an emissions unit and the public when determining the appropriate terms and conditions for a particular clean unit designation in a permit. A one-size-fits-all approach will not work in this case because of the many different types of emissions units that could obtain clean unit status and the types of BACT or LAER determinations.

The Part 70 requirements will require a permit modification whenever clean unit status is lost such that the permit terms and conditions accurately reflect the applicable requirements for the unit. The type of permit modification required will most likely partially depend on the action that causes or will cause the unit to lose its status.

*Timing for Controls Comparable to BACT or LAER*

*Comment:* IDEM proposes that a facility may not obtain the clean unit designation for projects that were undertaken prior to issuance/approval of its rules unless a major NSR permit was obtained. While we believe that IDEM should adopt the federal approach, we understand IDEM's concern about the resources that might be needed to recreate BACT or LAER determinations. Because IDEM and sources are now on notice of this requirement in the rule, these resource issues should not present a problem for any controls installed after March 3, 2003, the effective date of the federal rule. Therefore, IDEM should state that any controls installed after March 3, 2003 should qualify for the clean unit designation. We are concerned that, although IDEM is moving expeditiously to adopt the new rules, there may be a substantial time period before U.S. EPA approval of the new rules simply due to the time required to complete the appropriate procedures. In the meantime, sources and IDEM are well aware of what is required to establish a clean unit designation and there should be no hardship in meeting these requirements for minor NSR permits issued after March 3, 2003. (CASE)

*Response:* Minor sources that construct between March 3, 2003 and the anticipated October 2004 effective date of Indiana's NSR rules are not only on notice of the federal rule, but have been on notice of IDEM's proposal since September 1, 2003. If IDEM's

proposal is adopted into Indiana's NSR rules, then a source would only be affected if it chose to install equipment that qualified under the federal five year averaging, or selection, process rather than technology that was more clearly BACT or LAER. Control technology requirements are not likely to be significantly different between March 3, 2003 and October 2004.

*Information required for clean unit designation request*

*Comment:* The language in 326 IAC 2-2-10 does not contain any substantive information about what information is required of the applicant who requests a clean unit designation per the provisions of 326 IAC 2-2.2-2. The specifics mentioned under paragraph (1) of this section appear to only apply to new sources or major modification. We presume that IDEM will issue guidance that will more closely identify the information needed by IDEM in order to issue a clean unit designation per the provisions of 326 IAC 2-2.2-2. However, we recommend that IDEM consider language in this section identifying the information necessary for IDEM to make the clean unit designation. (TRI)

*Comment:* The existing language in 326 IAC 2-2.2-2(c)(2) does not clearly indicate that the requirement to demonstrate that the allowable emissions from the unit for which clean unit status is being requested is the responsibility of the owner or operator applying for this status. Unlike 326 IAC 2-2.2-2(c)(1)(A), there is no phrase indicating that the owner or operator must make this demonstration. If it is the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, a phrase should be added that would direct the interested parties to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7. If it is not the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, then the proposed changes made by IDEM to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 should be reconsidered or eliminated. (TRI)

*Response:* IDEM has added language in 326 IAC 2-2-10 to clarify that the applicant shall submit the information for the clean unit designation process, including the air quality analysis. IDEM requires the owner or operator to make the air quality demonstrations for major new source review permitting and intends to require that the owner or operator make the demonstration for the allowable emissions from the unit for which clean unit status is being requested. The requirement to conduct the air quality analysis would apply whether or not IDEM cites the sections of 326 IAC 2-2 that address air quality impact analyses within the clean unit rules. IDEM previously added provisions in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 to clarify this intent. The U.S. EPA has not revised the federal PSD rule to include more specific application requirements for major new source review or for review of clean unit designations; therefore, IDEM will not include rule language to include more specific requirements. The evaluation criteria for clean unit designations to be used by IDEM are provided in 326 IAC 2-2.2 and 326 IAC 2-3.2. The information provided by the owner or operator should be sufficient to evaluate the control technology in accordance with the criteria specified in the rule.

*Exemption from air quality analysis for sources that have not gone through a NSR permitting review*

*Comment:* We suggest that owners or operators of stationary sources that request a clean unit designation, but have not gone through a major NSR permitting review be allowed, at a minimum, the same exemptions as allowed for new or modified sources. Suggested changes to 326 IAC 2-2-4(b)(2) are:

(b) Exemptions are as follows:

(1)....

(2) A source or modification **or clean unit designation per 326 IAC 2-2.2-2** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emission increase of the pollutant from a new source or the net emissions increase of the pollutant from the modification, **or the allowable emission rate on which the clean unit designation is based** would cause, in any area, air quality impacts less than....

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

(TRI)

*Response:* IDEM agrees that an owner or operator that requests a clean unit designation without going through major new source review permitting should be allowed an exemption from the air quality analysis requirement if the allowable emissions are below the significance level. IDEM has made the suggested changes in 326 IAC 2-2-4(b)(2).

*Requirements for sources that have not gone through a NSR permitting review*

*Comment:* The existing language in 326 IAC 2-2-5(a) does not address, in all situations, what is required of an owner or operator of a stationary source that is requesting a clean unit designation but has not gone through a major NSR permitting review. The existing paragraph only addresses situations that involve allowable emissions increases. It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the need for an allowable emissions increase.

We suggest that the language be clarified so that owners or operators of stationary sources that request a clean unit designation but have not gone through a major NSR permitting review and are not requesting allowable emissions increases have definitive

language on the required demonstration. Suggested changes to this section are:

(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 **per 326 IAC 2-2.2-2**, 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....

(1)....

(2) any applicable maximum allowable increase over the baseline concentration in any area, **as described in section 6 of this rule.**

**In the case of a clean unit designation, the owner or operator must demonstrate that the allowable emission rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of the items noted in (1) and (2) above.**

(TRI)

*Response:* Major new source review has always involved modeling the allowable emissions from a unit that was changed. The clean unit designation is not different in that the owner or operator is requesting a designation for the unit so that the owner or operator can modify the unit within specific constraints and avoid major new source review for those modifications. IDEM has clarified this intent by modifying the language in 326 IAC 2-2-5.

*Units that have not gone through a NSR review and do not trigger an emissions increase*

*Comment:* The existing language in 326 IAC 2-2-6(a) is confusing in that it appears to address “increased emissions.” It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the any emissions increase.

We believe the language we proposed in our comment for 326 IAC 2-2-5(a)(2) would provide sufficient direction to the owner and operator who requests a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger an emissions increase.

We suggest the language IDEM has added in section 6 related to clean units be eliminated as follows:

(a) Any demonstration pursuant to section 5 of this rule ~~or 326 IAC 2-2.2-2(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)....

(TRI)

*Response:* IDEM agrees that the additional clarification was not necessary because Section 5 of the rule adequately addresses applicability of this section. IDEM has removed the added language in 326 IAC 2-2-6(a).

*Air quality analysis requirements*

*Comment:* Similar to requirements for requesting a clean unit designation for emission units that have not previously received a major NSR permit that IDEM has proposed to add under 326 IAC 2-2, IDEM has added similar rule language in 326 IAC 2-3. This language states that the department must determine that the allowable emissions for the emissions unit requesting a clean unit designation in a nonattainment area will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment. However, unlike in 326 IAC 2-2, there are no corresponding sections in 326 IAC 2-3 that direct the applicant about what type of air quality analysis should be performed. We suggest that IDEM clarify for those owners or operators who request a clean unit designation per 326 IAC 2-3.2-2 what the air quality analysis will entail. (TRI)

*Comment:* We believe that there is value in making the clean unit designation available to those emissions units that have not previously received a major NSR permit, even in nonattainment areas. We support IDEM’s development of rules to this affect. However, the current proposed revisions under 326 IAC 2-3 do not adequately develop for the interested owners or operators the procedures to follow related to the air quality analysis requirements. (TRI)

*Response:* IDEM based the proposed provisions on the federal rules in 40 CFR Part 51.165. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. IDEM will not make any changes at this time since the federal rules are not specific.

Minor modifications at major sources can obtain clean unit designation through the provisions in 326 IAC 2-3.2. If the physical change or change in the method of operation has a potential to emit greater than the significant levels defined under 326 IAC 2-3-1(qq), the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A). If the impacts are less than the significant impact level, then no degradation of air quality degradation is presumed to occur.

*PSD increments*

*Comment:* It does not appear to make sense that a demonstration of no violation of applicable PSD increments be made in a

nonattainment area. By its classification as a nonattainment area for a pollutant, no increments are set and increment consumption is not relevant since the area in question does not meet the national ambient air quality standard for the nonattainment pollutant. (TRI)

*Response:* The federal provisions in 40 CFR 51.165(d)(3)(ii) include this reference to a demonstration of no violation of applicable prevention of significant deterioration increments in a nonattainment area. Therefore, IDEM must include this reference in the rule. IDEM agrees that in practical application the increment consumption requirements are not relevant in a nonattainment area since the area already does not meet the national ambient air quality standard for the nonattainment pollutant. To demonstrate that a unit that has allowable emissions greater than the significant level will not contribute to the violation, the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A).

*Disallowing a clean unit designation*

*Comment:* The proposed provision, 326 IAC 2-2.2-1(d)(2)(A), disallowing 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 is contrary to the concept of BACT. The term “uncontrolled” implies post-combustion controls and as such ignores any emissions reduction benefits and additional expense incurred by an applicant to purchase and install an emissions unit that incorporates the latest in emissions reduction technology inherent in the design of that newest upgraded model of the particular piece of equipment. For example, a choice of a combustion turbine employing the latest in low-NO<sub>x</sub> emission reduction combustion technology in its design, without the addition of a post-combustion NO<sub>x</sub> control device, should not be disqualified if BACT for that unit has no additional control and it emits less NO<sub>x</sub> than the less expensive version of the same control technology. This provision should be modified to allow for clean unit designation for such a situation. (NIPSCO)

*Response:* The language in the proposed 326 IAC 2-2.2-1(c)(2)(A) [this provision was 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice] is directly from the federal provisions at 40 CFR 51.166(t)(3)(ii)(a) and 40 CFR 52.21(x)(3)(ii)(a). The situation that the commentor describes, however, is not disallowed by this provision because it can be considered to be pollution prevention technology that can be considered for BACT for the reasons that the commentor stated. No change to the provision is necessary.

*Investment for control technology*

*Comment:* The provision, 326 IAC 2-2.2-1(d)(2)(A), should be modified to indicate that the “...investment to install the control technology...” includes the situation where an applicant incurs additional expense to purchase the lower emitting technology inherent in the design of an emission unit such as a control technology that includes low-NO<sub>x</sub> combustion technology as an inherent design feature. (NIPSCO)

*Response:* The language does not need to be changed because the phrase, “the level of a standard, uncontrolled, new emissions unit of the same type” encompasses a situation where an applicant incurs an additional expense to purchase a non-standard new emissions unit that inherently results in lower emissions. This provision was originally listed as 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(2)(A) due to formatting changes.

*BACT and LAER clarification*

*Comment:* In 326 IAC 2-2.2-1(d)(3), current-day BACT or LAER should be clarified to specify it is the BACT or LAER as of the date of the submittal of the clean unit designation application to IDEM. In 326 IAC 2-2.2-1(e)(1), 326 IAC 2-2.2-2(c)(4), and 326 IAC 2-2.2-2(d)(3), current-day BACT should be clarified to specify it is the BACT as of the date of the submittal of the clean unit designation application to IDEM. (NIPSCO)

*Response:* The proposed language referring to “current-day BACT or LAER” is from the federal provisions at 40 CFR 51.166(t) and (u) and 40 CFR 52.21(x) and (y). “Current-day BACT or LAER” is not “BACT or LAER” as of the date of submittal of the clean unit designation application. It is BACT or LAER as of the day of issuance of the determination. In accordance with the November 17, 1998, U.S. EPA memo titled “Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements”, IDEM can consider information provided after the submittal of an application to determine BACT or LAER; therefore, the commentor’s characterization is inaccurate. This provision was originally listed as 326 IAC 2-2.2-1(d)(3) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(3) due to formatting changes.

*Comment:* In 326 IAC 2-2.2-1(g)(4), for clarity, it would be helpful if this provision specifically indicated the BACT or LAER is the BACT or LAER utilized for the clean unit designation. The following may be helpful:

“(4) All emissions limitations and work practice requirements adopted in conjunction with the BACT or LAER **for the clean unit**, and any physical...”

(NIPSCO)

*Response:* This meaning is clarified by taking the provision in the context of the provisions within the subsection. The language in 326 IAC 2-2.2-1(f) [this provision was originally listed as 326 IAC 2-2.2-1(g) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(f) due to formatting changes] states that the permit must include the terms and conditions listed within that subsection related to the clean unit. Each subdivision within the subsection refers to terms and conditions related to the clean unit

designation. No rule change is necessary for clarification.

*Presumptive determination*

*Comment:* The provision, 326 IAC 2-2.2-2(d)(1), purportedly addresses whether a unit's emissions control technology is equivalent to BACT determined at the time of the submission of the clean unit designation application to IDEM. IDEM also proposes to compare the applicant's presumption of being comparable to BACT, as listed in 326 IAC 2-2-1(i), with additional BACT or LAER determinations of which it is aware. We question whether the comparison to LAER is appropriate and believe it should not be included in any comparison for consideration of a presumptive determination of whether a unit's emission control technology is equivalent to BACT. (NIPSCO)

*Response:* IDEM agrees that the reference to LAER is not necessary since the clean unit designation provisions in this section have been changed from the federal provisions to ensure that the emissions control technology is equivalent to BACT instead of the average of BACT and LAER determinations for the preceding five years. IDEM has removed the phrase "or LAER" from 326 IAC 2-2.2-2(c)(1). This provision was originally listed as 326 IAC 2-2.2-1(d)(1) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(1) due to formatting changes. It should be noted that the BACT determinations do include a consideration of LAER determinations.

*Additional information for determination*

*Comment:* We believe it is unfair for the IDEM to be making comparisons to "additional... determinations of which the department is aware". The applicants and IDEM should be utilizing the same database containing the same information for this process and, therefore, IDEM should make this database available at no charge to the applicant prior to the applicant's submittal of the application.

If IDEM retains the language of the "any additional... determinations of which the department is aware", it should explicitly state in the rule language the information from this and any additional information obtained during the public participation period must be limited to information of determinations no more current than the date of the applicant's submittal of their clean unit designation application to the department. (NIPSCO)

*Response:* The federal rule provisions at 40 CFR 51.166(u)(4)(i) and 40 CFR 52.21(y)(4)(i) include the language regarding consideration of additional determinations of which IDEM is aware; therefore, the language is appropriate and required by the federal provisions. IDEM would make available to the applicant and the public any additional information it considered in the clean unit determinations.

*Renewals*

*Comment:* On the renewal of a clean unit, the burden to require modeling for NAAQS for a renewal is an excessive expense to be required automatically. If at the end of a clean unit designation period, BACT or LAER has not changed for control of the pollutant or the clean unit is performing comparable to BACT or LAER, then the owner should be allowed to request a renewal with documentation of the BACT or LAER status, and provide test data to prove the unit is still complying within past limits set when the unit was first determined to be a clean unit. This renewal should be public noticed for 30 days. Modeling should only be required if BACT or LAER has changed significantly or there have been major changes to the NAAQS in the area. (NSC)

*Response:* The federal provisions at 40 CFR 51.166(t)(3) and (u)(3) and 40 CFR 52.21(x)(3) and (y)(3) require the same demonstrations for re-qualification as those required for qualification, including the air quality demonstration, except that the applicant will not be required to meet an additional investment test. In addition, section V.C.9. on page 80227 of the December 31, 2002 *Federal Register* notice (67 FR 80227) finalizing the federal major new source review revisions indicates that the emissions unit must go through an air quality review for re-qualification. The renewal will go through public comment for 30 days. Even if there are not changes in the national ambient air quality standards (NAAQS) in the area, more increment could have been consumed by new or existing sources since the time of the original designation. Since the renewed designation will allow the unit to make modifications for an additional ten years within certain constraints so that major new source review, including a modeling analysis, will not be necessary, the modeling analysis at renewal must be required in accordance with the same guidelines as the original designation.

**Pollution Control Projects**

*Support for pollution control project exemption*

*Comment:* We support the revisions IDEM has proposed to the pollution control project exemption in this proposed rule. (AEP)

*Response:* IDEM agrees that simplifying the process for pollution control projects is a positive change.

*Environmental analysis*

*Comment:* We urge that a full environmental analysis 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. This multi-media analysis is critical for PCPs and other environmental permitting programs and should be adopted by all of the environmental regulatory boards. The NSR rules should require verification and approval by IDEM that a PCP will realize true environmental benefits. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* The provisions at 326 IAC 2-2.3-1(g) and 326 IAC 2-3.3-1(g) ensure that a pollution control project will realize true environmental benefits and provide the documentation for IDEM to review during an inspection to verify that a pollution control project is operated and maintained consistent with the environmental benefit analysis. In addition, IDEM has the authority to review the notifications and applications submitted in accordance with 326 IAC 2-2.3-1(b) and 326 IAC 2-3.3-1(b). While pre-approval is only necessary for unlisted projects, IDEM has the authority to ensure that listed pollution control projects meet the environmental benefit and air quality criteria as well.

The U.S. EPA clarified that non-air pollution impacts will not be considered in the “environmentally beneficial” determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM cannot include a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion.

If IDEM or a member of the public has a concern about the impacts of a project on other media, IDEM can discuss the project with other offices within IDEM to determine if authorities held by another office may be used to alleviate the concern. In the past, IDEM has discussed projects with other offices within IDEM when such multi-media concerns have arisen.

#### *Minimizing collateral emissions*

*Comment:* We support IDEM’s decision to adopt the pollution control project (PCP) exclusion directly from the federal rules and to conform the existing state regulations to reflect the listed projects and other elements of the new exclusion. We are concerned, however, with the change that IDEM proposes regarding minimizing collateral emission increases in nonattainment areas. We believe that this provision is inappropriate and should be revised. The test in the federal rule is whether the project is environmentally beneficial. If a project meets that test, it should be approved. We recognize that U.S. EPA states in the preamble to the NSR Improvement rule that “because increases in a nonattainment pollutant contribute to the existing nonattainment problem, you or the reviewing authority must offset with acceptable emissions reductions any significant emissions increase in a nonattainment pollutant resulting from a PCP.” (67 Fed. Reg. 80237.) We do not interpret this statement to require that the collateral increase must be offset to zero as is implied by the draft regulatory language. Indeed, U.S. EPA refers to “acceptable emissions reductions.” A source would not even be required to use the PCP exclusion if it were not projecting a greater than significant increase in emissions of a collateral pollutant. Any source projecting a less than significant increase would simply be required to track its emissions under the reasonable possibility test. Thus, any offsetting required should only need to reduce the projected actual increase level down to the significant level. (CASE) (ALCOA)

*Response:* IDEM disagrees with this interpretation. The concept of offsets for major new source review has always been to completely offset emissions increases to at least zero. IDEM has interpreted the term “acceptable” to mean that IDEM does not have to require the higher offset to emissions increase ratios that are required for projects that must go through major new source review in a nonattainment area. IDEM has provided a one-to-one ratio instead of the 1 to 1.3 ratio as an encouragement to pollution control projects in nonattainment areas that otherwise would have been required to go through major new source review and obtain greater offsets. IDEM agrees that the final test is to prove that the project is environmentally beneficial, and for nonattainment areas, part of the proof is provided by offsetting the significant increase. If the project does not result in a greater than significant increase in a collateral pollutant, the project will not be required to apply for the exclusion or obtain offsets.

*Comment:* IDEM should clarify in the rule that this offset requirement would not apply where the collateral increase is of a substance that is a precursor for the same NAAQS pollutant. In other words, if a PCP would reduce VOC but slightly increase NO<sub>x</sub> in an ozone nonattainment area, the source should not be required to offset the NO<sub>x</sub> emissions since NO<sub>x</sub> and VOC are both precursors to the same NAAQS pollutant, ozone (unless the area was also not in attainment for NO<sub>x</sub>). (CASE) (ALCOA)

*Response:* While nitrogen oxides are precursors for ozone, there are currently no requirements in Indiana for sources to consider nitrogen oxide emissions increases under the nonattainment new source review rule provisions in ozone nonattainment areas. However, IDEM notes that the offset requirements may change under the 8-hour ozone and PM<sub>2.5</sub> implementation rules when U.S. EPA finalizes them. The existing offset procedures consistent with 326 IAC 2-3 will be followed. Therefore, a clarification is not necessary in the rules.

#### *Public notice for pollution control projects*

*Comment:* The length of time to procure and install equipment varies widely and is immaterial to the issue of public notice. We maintain that adoption of U.S. EPA’s approach in not requiring a public comment period for changes related to a pollution control project should be adopted. (INCMA)

*Response:* The federal rules at 40 CFR 51.166(v)(5) and 40 CFR 52.21(z)(5) require a public comment period for the approval of a pollution control project exclusion for unlisted projects; therefore, IDEM has adopted the federal approach. The Part 70 rules and Indiana’s associated rules implementing the Part 70 program at 326 IAC 2-7 require that all applicable requirements be included in a Part 70 permit. The addition of a listed pollution control project that uses the proposed pollution control project exclusion provisions triggers a new applicable requirement from 326 IAC 2-2.3-1(g) or 326 IAC 2-3.3-1(g). Since a new applicable



requirement is triggered, the Part 70 permit must be amended. In accordance with 326 IAC 2-7-11, an administrative amendment cannot be used to add a new applicable requirement; therefore, the minor permit modification procedures will be used. While the minor permit modification procedures in 326 IAC 2-7-12 require a public comment period, the applicant is allowed to proceed with the project without waiting for the minor permit modification to be issued. Therefore, the minor permit modification procedures will not affect the length of time to procure, install, and operate pollution control project equipment.

#### *Listed projects*

*Comment:* We reject IDEM's statement that it is not necessary for IDEM to draft a procedure for adding projects to the list because they lack authority to do so. We believe it is within IDEM's authority and responsibility to identify environmentally beneficial projects even with federal endorsement. (INCMA)

*Comment:* We believe there is an opportunity to further pollution prevention efforts in Indiana in the qualification of pollution control projects as "listed" versus "unlisted". Neither IDEM's draft NSR rule or U.S. EPA's rule provide a mechanism for proven and tested environmentally beneficial pollution control projects that are unlisted to become listed, thereby becoming eligible for the advantages afforded to listed projects. In order to provide an avenue for unlisted environmentally beneficial pollution prevention projects to become listed, thereby making available the less burdensome minor permit modification provisions, an avenue for unlisted, proven pollution control projects to become listed should be developed. (PPP)

*Response:* IDEM disagrees that it is within its authority to add projects to the presumptive list. The U.S. EPA stated in Section VI.B.2.d. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions that the U.S. EPA will update and maintain the presumptive list through notice and comment rulemaking. If and when sufficient data become available to justify that an unlisted pollution control project should be evaluated to be a listed pollution control project, IDEM can discuss the project with U.S. EPA to recommend adding the project to the list. If U.S. EPA makes changes to the presumptive list, then IDEM will pursue the same changes in the state rules.

#### *Treating a PCP as a significant source modification*

*Comment:* The fee of \$3,500 required for a permit to "allow" a source to install or initiate a pollution control project is the same fee required for the installation of a significant emissions unit. If IDEM wants to encourage pollution control projects, it should not impose fees on a source to do so. (INCMA)

*Comment:* It is expensive for sources to pay a consultant to prepare an application for a significant source modification, pay a \$3,500 fee and pay for the equipment or the project to be implemented. Treating a pollution control project the same as an emissions unit project will only serve to discourage sources from installing pollution control equipment or implementing projects that reduce emissions. (INCMA)

*Response:* Most pollution control projects do not cause a significant increase in emissions, and, therefore, do not require the pollution control project exclusion from major new source review permitting and do not have an associated fee. For those projects that result in a significant increase in emissions, the significant source modification is required for unlisted projects because of the level of the emissions increase and the requirements in the federal rules for the permitting agency to issue an approval subject to public notice and U.S. EPA review for those projects that are not listed. While IDEM encourages pollution control projects, IDEM is also obligated to ensure that the air quality standards will not be violated whenever a major stationary source causes a significant emissions increase. The rules require IDEM to review and approve unlisted projects; therefore, a fee to complete the review is justified. There are no fees associated with the significant permit modification used to add the applicable requirements for the pollution control project exclusion to the Part 70 permit. There are no fees associated with the minor permit modification to add the applicable requirements for a listed pollution control project to the Part 70 permit.

#### *Air quality analysis*

*Comment:* We appreciate IDEM's decision to adopt the federal pollution control project exclusion provisions, however, we still believe it is necessary to define what the requirements are for conducting an air quality analysis for a pollution control project, as the requirements are not defined in the rule. (INCMA)

*Response:* IDEM based the proposed provisions on the federal rules. IDEM agrees that a clarification can be provided for attainment areas, and has therefore clarified, in 326 IAC 2-2.3-1(d)(5), that the required air quality impact analysis shall be performed in accordance with the provisions of 326 IAC 2-2-4 and 326 IAC 2-2-5. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. For implementation purposes, in lieu of an air quality analysis, the applicant of a pollution control project would be required to offset significant collateral emissions increases of a nonattainment pollutant. IDEM will not recommend any changes to the nonattainment pollution control project provisions at this time since the federal rules are not specific.

#### *Pollution prevention opportunities*

*Comment:* We believe there may be opportunities to further pollution prevention efforts in the assessment of pollution prevention projects for determination of environmental benefits. Currently, this review limits the review to air emissions. An NSR review of

pollution prevention projects should take into account reductions in air emissions, pollutant levels in and the quantity of wastewater generated and discharged as well as volumes and toxicity of solid waste streams. A project with minimal benefits in air quality could have significant environmental benefits in the areas of water and land, still making it a beneficial pollution prevention project that should be eligible for the benefits afforded by the revised NSR rules. Should this not be allowed by the federal NSR rule, we would like to see IDEM discuss this issue with U.S. EPA in an effort to make further progress on this issue. (PPP)

*Response:* The U.S. EPA clarified that non-air pollution impacts will not be considered in the “environmentally beneficial” determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM has not included a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion in the draft rule for preliminary adoption. However, IDEM will continue to work with the public and U.S. EPA regarding projects with multi-media benefits. The pollution control project exclusion is not necessary if the project does not result in a significant increase in emissions of a collateral pollutant.

#### *Collateral pollutants*

*Comment:* In 326 IAC 2-2.3-1(d)(4), the requirement to minimize collateral pollutants is overly broad in that it could be misunderstood to attempt to regulate pollutants in other media that are outside the authority of the Air Pollution Control Board and even other air emissions for which IDEM does not specifically have regulatory authority. We recommend this language be clarified to limit the minimization of emissions of collateral pollutants to regulated NSR air pollutants. The language should be clarified as follows:

“...and in a way as to minimize,... strategy, emissions of collateral **regulated NSR air** pollutants.”

(NIPSCO)

*Comment:* In 326 IAC 2-3.3-1(d)(4) and 326 IAC 2-2.3-1(g)(1), for consistency, the language should be modified as follows:

“...and in a way as to minimize,... strategy, emissions of collateral **regulated NSR air** pollutants.”

(NIPSCO)

*Response:* The federal rules at 40 CFR 51.165(e)(3)(iv), 40 CFR 51.166(v)(3)(iv), and 40 CFR 52.21(z)(3)(iv) do not use the phrase “regulated NSR air” in between “collateral” and “pollutants”. Since this is a certification statement, IDEM will not change the rule language from the federal version. A discussion at Section VI.A. on page 80232 (67 FR 80232) of the preamble in the December 31, 2002 *Federal Register* finalizing the major NSR rule revisions clarifies that U.S. EPA is concerned with air pollutants versus other media. In addition, pollutants other than regulated NSR air pollutants do not trigger major new source review and the need for an exclusion from major new source review.

### **Plantwide Applicability Limits**

#### *Prohibit emission increases*

*Comment:* We believe if IDEM proceeds with a PAL, the rule should prohibit emission increases and that the rules should require revocation of the PAL if the source is found to be in violation of the PAL. The rules should also require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. We appreciate and support IDEM’s position that PAL determinations will be subject to public review. (CAC) (HEC) (SDC) (STV) (VWI)

*Response:* IDEM agrees that PAL determinations should be subject to public review, but believes that PALs can be environmentally beneficial even without requiring a declining cap. 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 PAL provisions will limit the increase in actual emissions to the baseline actual emissions plus a one time addition of the significant level for a ten year period. The language in 326 IAC 2-2.4-11 and 326 IAC 2-3.4-11 defines the provisions the source must follow in order to increase a PAL emission limitation. IDEM believes the PAL rules provide sufficient review and compliance measures to assure there is not an increase in emissions that does not go through the appropriate modification procedures.

#### *Allocation of emissions upon termination*

*Comment:* While we agree that IDEM should retain discretion to make a fair and equitable allocation of the emissions under a PAL upon termination, we view the “sham PAL” scenario described at the September 10, 2003, public meeting as highly unlikely, given the investment that is required to develop a PAL. We also believe that sources will legitimately rely on their ability to make changes under the PAL and that they should not be penalized if a valid reason for early termination arises. We agree with IDEM that any source proposing to terminate a PAL should propose how the emissions should be allocated. IDEM’s rules should provide that, as long as the source’s proposal is reasonable and does not represent circumvention of the rules, it should be adopted in the new permit terminating the PAL. (CASE) (ALCOA)

*Comment:* We are concerned with IDEM’s proposed treatment of a PAL upon termination. We think that when a PAL expires, the PAL limit should continue to be an enforceable plantwide limit, but that it would no longer serve the purpose of being the threshold for NSR. In this way, the plantwide limit would continue to serve its purpose of limiting emissions without creating new

significant constraints that would arise with the desegregation of that limit. While the PAL cap would remain in effect, just as plantwide synthetic minor limits do at non-PAL facilities, changes after the PAL expires would need to be considered under the conventional NSR applicability criteria. In effect, the PAL would become a simple facility-wide limit. Under IDEM's draft NSR rules, companies with a terminated PAL are to continue to operate under the PAL limit until a revised permit is issued. We recommend that sources with terminated PALs be required to continue to demonstrate compliance with the facility-wide limit.

If IDEM believes that such an approach is not feasible for certain PAL sources, we recommend changes to its draft approach. Specifically, IDEM should not reallocate PAL emissions based on emission limits that were eliminated by a PAL. As U.S. EPA pointed out in the final NSR reform rules, the plant may have made changes under the PAL that would make it difficult or impossible to assign the old limits to the current equipment or meet the old limits. We recommend that the reallocation of a PAL begin with a proposal from the PAL owner. As long as the proposal from the PAL owner is practically enforceable and demonstrates that the overall PAL emissions limit is met, then IDEM should approve that proposal.

We are concerned that the lack of certainty regarding the treatment of PALs when they are terminated or revoked would make this valuable NSR reform measure too risky for most companies to use. A company considering a PAL needs to know with some certainty that, when a PAL is terminated, its facility will not be put into a position of noncompliance due to an unachievable reallocation of the PAL. (DCC)

*Response:* The draft rule does not penalize a source for terminating its PAL. In fact, it is considerably more flexible than the federal rule by allowing a source to terminate prior to the ten year expiration. IDEM added this flexibility to assure that sources would have a way out of the PAL, unlike the federal rules which lock the source into a ten year limitation. The termination procedures that IDEM created closely follow the expiration procedures as stated in the rules. IDEM does not believe this added flexibility has created a lack in certainty. As with the federal expiration procedures, the emissions will be reallocated per the source's proposal which will be reviewed by IDEM and the public. If a source provides a reasonable proposal for allocating the emissions, IDEM will approve the termination of the PAL.

*Discretion retained*

*Comment:* Under 326 IAC 2-2.4-1(b), it states that the department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of the rule. IDEM has not used "shall" in the language. Is IDEM retaining discretion to deny a PAL even if a source meets the requirements? If so, under what circumstances could a PAL be denied even if the source complied with the requirements? (INCMA)

*Response:* A PAL may not be the right program for everyone. IDEM reserves the authority to deny the PAL if the compliance history of the source is such that it does not seem likely that they will be able to comply with the PAL requirements or if there are other considerations indicating that a PAL is not workable or suitable for the source.

*Potential to emit*

*Comment:* In the definition of PTE under 326 IAC 2-2.4-2(k), "secondary emissions do not count in determining the potential to emit of a source". Secondary emissions are not defined. What does IDEM mean by "secondary emissions?" (INCMA)

*Response:* "Secondary emissions" are defined in 326 IAC 2-2-1(w) and generally refer to emissions that would occur as a result of the construction activity, but do not come from the constructed facility itself (for example, increases in vehicle emissions). The definitions section at 326 IAC 2-2.4-2 (a) indicates that a term that is not defined in 326 IAC 2-2.4-2 shall have the meaning provided in 326 IAC 2-2-1.

*Startup, shutdown, and malfunction emissions*

*Comment:* This requires that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions. It does not include the language "if quantifiable". What protocol has IDEM provided to U.S. EPA for sources to enable them to make this compliance determination? (INCMA)

*Response:* U.S. EPA has indicated that use of the phrase "to the extent quantifiable" would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase "to the extent quantifiable" from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On January 7, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to 326 IAC 2. Comments were made by the following parties:

Hoosier Environmental Council (HEC)

Indiana Chamber of Commerce (ICC)

Citizen's Thermal Energy (CTE)

Eli Lilly and Company (ELC)

## ALCOA (ALC)

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

*Comment:* The rulemaking should not proceed while the litigation is being conducted at the federal level. If there are changes to the federal rule, then the state rule will need to change also. IDEM has said that U.S. EPA requires that these changes be submitted as a SIP revision by 2006. Given that the federal court has agreed to an expedited litigation schedule, we believe that there's plenty of time to wait for litigation to be finished before rulemaking continues. (HEC)

*Response:* It will be several more months before this rule is ready for final adoption. Any developments in the litigation during that time will be taken into account. The Court indicated the federal court case would be on an expedited schedule, but it is not clear what that means. IDEM believes it is important to keep the process moving during the litigation. IDEM also notes that it is significant that the Court Of Appeals for the District of Columbia Circuit Court did not stay this rule though they did for the Equipment Replacement Provisions rule.

*Comment:* Backsliding is prohibited by the CAA, yet, in the July 23, 1996 *Federal Register*, U.S. EPA estimated that these changes would actually reduce the number of sources subject to NSR by over 25% and that 25% of the modifications would also be excluded in the NSR review under these rules. (HEC)

*Response:* The fact that fewer projects will be subject to NSR does not in and of itself mean that there will be backsliding in terms of environmental protection. The types of projects that will not need to go through NSR are ones where little or no emissions increase is expected. Furthermore, projects will still be subject to Indiana's minor NSR program. Under the new rule, modifications under the major NSR program will rely on actual emissions increases, but the state's minor NSR program will continue to be based on the potential to emit. Also, Part 70 requires that all applicable requirements be included in the Title V permit. All of the major NSR sources will operate under Part 70, and therefore, will be required to apply for a Title V permit modification, in some cases when neither minor NSR or major NSR apply.

*Comment:* We are pleased that IDEM is recommending changes to the retroactive designation of clean units to ensure that emissions are not increased consistent with the Clean Air Act. IDEM agrees to ensure that units for which a clean unit designation is requested be required to be BACT or LAER, and that these standards be set using the top down approach rather than an averaging approach, and we strongly support these revisions. (HEC)

*Response:* We agree that our approach on clean units is environmentally protective.

*Comment:* We continue to have concerns about and are opposed to the projected actual emissions applicability test and we continue to believe that the actual to potential test is more protective of air quality. 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. In fact, in its 1996 analysis, U.S. EPA estimated that 25% of the modifications which would otherwise be subject to major NSR, would be excluded due to this provision.

IDEM stated that any problems with this revision would be caught and dealt with in the annual Title V compliance certification. This, however, would still allow potentially harmful increases in emissions in that period before the annual compliance certification. (HEC)

*Response:* The actual to potential test is unrealistic because most companies do not operate every hour of every day of the year. It is an artificial comparison when the past actuals are compared to a potential that does not reflect how the business is actually operated. For continuous operations, the past actuals would also be comparable. IDEM has reviewed applications that were submitted in the past to see if there are sources or projects that would have been reviewed differently and therefore, would have been determined to require some level of control as a result of that review. IDEM feels that this rule change will not allow projects that would have been controlled in the past to escape review of control under the revised rules.

*Comment:* We continue to believe that the rule should require that pollution control projects (PCP) realize overall environmental benefits by requiring a review of impacts on water and solid waste streams. IDEM stated that U.S. EPA will not consider non-air pollution impacts in the environmental review of these projects as pollution control projects, and yet clearly IDEM has the authority to be more stringent than the U.S. EPA requirements and we would encourage IDEM and the board to take another look at this issue. (HEC)

*Response:* In the preamble to the final rule in the December 31, 2002 *Federal Register*, U.S. EPA states that it is difficult to compare the cross-media tradeoffs, and therefore, difficult to weigh their importance in appraising the overall environmental benefit of a PCP. Because U.S. EPA did not receive any comments on how to compare cross-media pollution, it determined that it is inappropriate to consider non-air impacts when considering whether projects, activities, or work practices qualify for the PCP exclusion. (67 FR 80236)

*Comment:* We support preliminary adoption of the rule. (ICC) (CTE)

*Comment:* We support adoption of the rule. We believe the rules will promote greater environmental protection, improve production efficiency, help sources to use less energy, increase safety, and simplify the administrative aspects of the program. The rule changes will help existing sources as they are dealing with the recent economic downturn. There are better ways to improve

air quality, such as through the SIP process, rather than through NSR. (ELC)

*Response:* We agree that preliminary adoption of this rule is appropriate.

*Comment:* The definition of “regulated NSR pollutant” should exclude from the definition of “fluorides” a specific hydrogen fluoride which is also regulated under the NESHAPS under Title III. The definition under the PSD regulations should also specifically exclude hydrogen fluoride already regulated under Title III, in accordance with the 1990 Amendments. (ALC)

*Response:* IDEM recommends that the rule continue to regulate the hazardous air pollutants that are specifically listed under the definition of “significant” in 326 IAC 2-2-1(xx). Indiana’s PSD program regulates fluorides, including hydrogen fluoride, at major sources or modifications if emissions are above three tons per year. Section 112 does not typically regulate pollutants at levels less than ten tons per year. Hydrogen fluoride is a colorless gas that can cause severe respiratory damage with acute exposure and irritation and congestion of the nose, throat, and bronchi at low, chronic levels of exposure. IDEM has consistently recommended that the PSD program continue to regulate the specifically listed toxic air pollutants including, among others: asbestos, beryllium, mercury, and fluorides. Therefore hydrogen fluoride has not been excluded from fluorides in 326 IAC 2-2-1(xx)(L) and 326 IAC 2-2-4(b)(2)(A).

326 IAC 2-1.1-7	326 IAC 2-2.5
326 IAC 2-2-1	326 IAC 2-2.6
326 IAC 2-2-2	326 IAC 2-3-1
326 IAC 2-2-3	326 IAC 2-3-2
326 IAC 2-2-4	326 IAC 2-3-3
326 IAC 2-2-5	326 IAC 2-3.2
326 IAC 2-2-6	326 IAC 2-3.3
326 IAC 2-2-7	326 IAC 2-3.4
326 IAC 2-2-8	326 IAC 2-5.1-4
326 IAC 2-2-10	326 IAC 2-7-10.5
326 IAC 2-2.2	326 IAC 2-7-11
326 IAC 2-2.3	326 IAC 2-7-12
326 IAC 2-2.4	

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 under 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 PAL 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 maximum combined fee for all PAL pollutants 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, PROPOSED TO BE AMENDED AT 27 IR 250, SECTION 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 preceding the particular date and 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 that restrict the operating rate or hours of operation, or both) and the most stringent of the:

- (1) applicable standards as set forth in 40 CFR **Part 60\*** and 40 CFR **Part 61\***;
- (2) state implementation plan emissions limitation, including those with a future compliance date; or
- (3) 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. The baseline actual emissions shall be determined in accordance with the following:**

**(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by 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. The baseline actual emissions shall be determined in accordance with the following:**

**(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by 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).**

~~(e)~~ **(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  $\text{PM}_{10}$  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)\***.

~~(f)~~ **(g)** "Baseline concentration" means that ambient concentration level 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 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 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.

~~(g)~~ **(h)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such 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, the term refers to those on-site activities other than preparatory activities 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, 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 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 that achieve equivalent results.

~~(j)~~ **(j)** “Building, structure, facility, or installation” means all of the pollutant-emitting activities 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, for example, ~~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)\*.

~~(k)~~ **(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.

~~(l)~~ **(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 criteria:**

**(1) An emissions unit that:**

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

**(B) is complying with the 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)\*.**

~~(n)~~ **(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.

~~(o)~~ **(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.

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

(1) fabrication;

(2) erection;

(3) installation;

(4) demolition; or

(5) modification;  
of an emissions unit, 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 complete the following:**

- (1) Sample emissions on a continuous basis.**
- (2) If applicable, condition emissions.**
- (3) Analyze emissions on a continuous basis.**
- (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, O<sub>2</sub> or CO<sub>2</sub> 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 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 the following two (2) types of emissions units:**

- (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). A replacement unit is an existing emissions unit.**

(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 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.**

(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:**

- (1) treaty;**

- (2) agreement;
- (3) executive order; or
- (4) act of Congress.

(v) **(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 most stringent emissions limitation that is as follows:**

- (1) 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) 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 pollutant that is being regulated under the CAA and a significant net emissions increase of a regulated NSR pollutant from the major stationary source.~~ **net emissions increase of a regulated NSR pollutant from the major stationary source.** The following shall apply:

- (1) Any **net 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 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 that the source:
    - (i) was capable of accommodating before January 6, 1975, unless ~~such the~~ change would be prohibited under any enforceable permit condition that was established after January 6, 1975, pursuant to:
      - (AA) 40 CFR **Part 52.21\***;
      - (BB) this rule;
      - (CC) 326 IAC 2-3; or
      - (DD) minor new source review regulations approved pursuant to 40 CFR **Part 51.160** through 40 CFR **Part 51.166\***; or
    - (ii) 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 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.~~
- (I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that

**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.**

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.**

~~(y)~~ **(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.

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

(1) Any of the following stationary sources of air pollutants that are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and 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~~ **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) 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 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.

~~(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 PM<sub>10</sub> 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 PM<sub>10</sub> 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) respect to any regulated NSR pollutant emitted by a major stationary source, means the following:**

- (1) ~~Any~~ **The amount by which the sum of the following exceeds zero (0):**
  - (A) ~~The increase in actual~~ **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)~~ **(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)~~ **(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)~~ **(A) five (5) years before construction on the particular change commences; and**
  - ~~(i) (B)~~ **(B) that the increase from the particular change occurs.**
- ~~(B) (3)~~ **(3) An increase or decrease in actual emissions is creditable only if:**
  - ~~(A)~~ **(A) 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**
  - ~~(B)~~ **(B) the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-2.2-1(h) and 326**

**IAC 2-2.2-2(j).**

~~(E)~~ (4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides 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 PM<sub>10</sub> emissions shall be used to evaluate the net emissions increase for PM<sub>10</sub>.~~

~~(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(h) 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, set of work practices, or project, including pollution prevention undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. ~~Such that reduces emissions of air pollutants from the unit. The qualifying activities or projects are limited to the following:~~ 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. 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) ~~The installation of Conventional or innovative pollution control technology, including, but not limited to, the following:~~

~~(A) advanced flue gas desulfurization or~~

~~(B) sorbent injection for control of sulfur dioxide. and nitrogen oxides controls.~~

~~(C) 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 the following:

(A) Natural gas or coal reburning.

(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 H, 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.

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

**(3) Flue gas recirculation, low-NO<sub>x</sub> 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 than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(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.

~~(ee)~~ (nn) “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 enforceable as a **practical matter**. Secondary emissions do not count in determining the potential to emit of a **stationary** 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, O<sub>2</sub> or CO<sub>2</sub> 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 consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, 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 to the extent they are affected by the project; 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<sub>x</sub> 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” 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” 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)(1)(A) through (xx)(1)(U).**

~~(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. The department 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 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) PM<sub>10</sub>: 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 (H<sub>2</sub>S): ten (10) tons per year.
- (O) Total reduced sulfur (including H<sub>2</sub>S): ten (10) tons per year.
- (P) Reduced sulfur compounds (including H<sub>2</sub>S): 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  $3.5 \times 10^{-6}$  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.**

~~(kk)~~ **(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.

~~(hh)~~ **(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 through 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.

~~(b)~~ The owner or operator of a ~~(c)~~ **No new major stationary source or major modification to which the requirements of sections 3 through 5, 7, 8(a), 10, 14, and 15 apply** shall not begin actual construction unless **without a permit that states that the major stationary source or major modification will meet** the requirements in of sections 3 through 8; **5, 7, 8(a), 10, and 14, through 16 and 15** of this rule. have been met and a permit has been issued under this rule:

**(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 both 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 if 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, if 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 considered to occur.**

**(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), 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.**

~~(c)~~ **(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.**

~~(d)~~ **(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.

~~(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:

~~(f)~~ **(i)** The requirements of sections 3 ~~4;~~ **through 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 under 326 IAC 2-2.2-2** 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 **regulated NSR** 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 **regulated NSR** 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 regulated NSR 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, **or clean unit designation** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if **either of the following apply**:

(A) The emissions increase of the pollutant from a new source, ~~or~~ the net emissions increase of the pollutant from a modification, **or the allowable emission rate on which the clean unit designation is based**, would cause, in any area, air quality impacts less than:

(i) Carbon monoxide: 575  $\mu\text{g}/\text{m}^3$ , 8-hour average.

(ii) Nitrogen dioxide: 14  $\mu\text{g}/\text{m}^3$ , annual average.

(iii)  $\text{PM}_{10}$ : 10  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(iv) Sulfur dioxide: 13  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(v) 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.

(vi) Lead: 0.1  $\mu\text{g}/\text{m}^3$ , 3-month average.

(vii) Mercury: 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(viii) Beryllium: 0.001  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(ix) Fluorides: 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(x) Vinyl chloride: 15  $\mu\text{g}/\text{m}^3$ , 24-hour average.

(xi) Total reduced sulfur: 10  $\text{mg}/\text{m}^3$ , 1-hour average.

(xii) Hydrogen sulfide: 0.2  $\mu\text{g}/\text{m}^3$ , 1-hour average.

(xiii) Reduced sulfur compounds: 10  $\mu\text{g}/\text{m}^3$ , 1-hour average.

(B) The concentrations of the pollutant in the area that the source, ~~or~~ modification, **or clean unit designation** 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 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 **as described in section 6 of this rule.**

**(b) The owner or operator that requests a clean unit designation under 326 IAC 2-2.2-2 shall demonstrate that the allowable emissions rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of any:**

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

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

~~(d)~~ (e) 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, PROPOSED TO BE AMENDED AT 27 IR 256, SECTION 2, 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 under section 5 of this rule ~~should~~ **shall** demonstrate that increased emissions caused by the proposed major stationary source or major modification 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) from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) 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 PM<sub>10</sub> as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments	
Pollutants	Allowable Increments (Micrograms per Cubic Meter, µg/m <sup>3</sup> Limits)
(A) Particulate matter:	
(PM <sub>10</sub> ):	
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 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 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 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) 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 under subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted under this rule. 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 the 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) The emissions calculated under the actual-to-projected actual test stated in section 2(d)(3) of this rule.**

**(D) 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 following**:
  - (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 in Attainment Areas**

##### **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 this section. 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. A source that is subject to P.L.231-2003, 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:

- (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 BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT 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 BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT 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 considered an existing emission unit and 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).

(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 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 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 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).

(d) 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.

(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:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day BACT under subsection (c)(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 (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(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 (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 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 that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(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. 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, 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. 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, 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, 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 described 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 the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance with the 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 (f)(4).

(2) The clean unit must be in compliance 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 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.

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.

(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 2-2.2-1*)

#### **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 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. 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.231-2003, 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)(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 considered an existing emission unit and 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).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). 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 (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). 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 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) 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 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 unit, 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 approval 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 2-7-12:**

**(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.**

**(2) The effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval 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, 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) The expiration date of the clean unit designation. If this date is not known when the department issues the approval, then the approval 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, 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 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 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 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 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 following provisions apply:**

**(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; 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.

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.

(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 in Attainment Areas**

#### **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.231-2003, 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(I), or, if the project is not listed in 326 IAC 2-2-1(I), 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 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(I) 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 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. An air quality impact analysis required for any pollutant that will experience a significant emissions increase as a result of the project shall be performed in accordance with 326 IAC 2-2-4 and 326 IAC 2-2-5.

(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 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 shall address all material comments received by the end of the comment period before taking final action on the approval.

(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 in Attainment Areas**

##### **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.231-2003, 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, that meets the requirements in this rule, and that 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 2-2; and
- (3) is not subject to 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 326 IAC 2-2-1.

(d) “Major emissions unit” means any emissions unit that emits or has the potential to emit one hundred (100) tons per year or more of the PAL pollutant in an attainment area.

(e) “PAL effective date” generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL under section 11 of this rule 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) “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).

(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 2-2-1(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(a) 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) regulated NSR 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 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:

- (1) established;
- (2) renewed;
- (3) increased;
- (4) terminated; or
- (5) revoked;

through 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 10 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 in accordance with 326 IAC 2-2-1(e) 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, except modifications to existing 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 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 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 as follows:**

**(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) 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)(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 PAL 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 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 2-2.4-10*)

#### **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 during the PAL effective period 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 must be revised to reflect the increased PAL level under 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 to the department 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*)

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.231-2003, SECTION 6, Endangered Industries**

**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(f)(4)	40 CFR Part 52.21(x)(6)(iv)*
326 IAC 2-2.2-1(g)(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(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(f)	40 CFR Part 51.165(d)(6)*

(c) The owner or operator of a source subject to this rule shall also comply with the federal provisions in 40 CFR Part 52.21(y)(4)(iii)(A) and 40 CFR Part 51.165(d)(4)(iii)(A).

(d) 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.

(e) 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, PROPOSED TO BE AMENDED AT 26 IR 2000, SECTION 7, 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 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. The baseline actual emissions shall be determined in accordance with the following:**

**(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by 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. The baseline actual emissions shall be determined in accordance with the following:**

**(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions and to the extent they are affected by 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 criteria:**

**(1) An emissions unit that:**

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

**(B) is complying with the 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:

- (1) fabrication;
- (2) erection;
- (3) installation;
- (4) demolition; or
- (5) 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 complete the following:**

- (1) Sample emissions on a continuous basis.**
- (2) If applicable, condition emissions.**
- (3) Analyze emissions on a continuous basis.**
- (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, O<sub>2</sub> or CO<sub>2</sub> concentrations; and**
- (2) record average operational parameter values on a continuous basis.**

~~(q)~~ **(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)~~ **(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)~~ **(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 the following two (2) types of emissions units:**

- (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). A replacement unit is an existing emissions unit.**

**(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: **most stringent emissions limitation that is as follows:**

(1) ~~The most stringent emissions limitation which~~ 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~~ 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 **and a significant net emissions increase of a regulated NSR 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  $\text{NO}_x$  budget unit, as defined in 326 IAC 10-4-2, that is being installed to control  $\text{NO}_x$  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).

(†) **(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.

(†) **(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).

(†) **(dd)** “Net emissions increase”, with ~~reference to a significant net emissions increase,~~ **respect to any regulated NSR**

**pollutant emitted by a major stationary source**, means 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 section 2(c) and 2(d) of this rule.

(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:

(+) (A) Any increase in actual emissions from a particular physical change or change in the method of operation.

(-) (B) Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

(+) (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:

(+) (AA) The date five (5) years before construction of the particular change commences.

(+) (BB) The date that the increase from the particular change occurs.

(+) (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).

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

(-) (v) A decrease in actual emissions is creditable only to the extent that:

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

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

(+) (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

(+) (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.

(+) (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.

(yy) (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<sub>x</sub> 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 than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(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 as a practical matter. 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, O<sub>2</sub> or CO<sub>2</sub> 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 consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, 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 to the extent they are affected by the project; 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 is 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" 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 <sub>10</sub>	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. 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 2-3-1; 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 considered to occur.**

**(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), 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.**

~~(d)~~ **(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.

~~(e)~~ **(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.

~~(f)~~ **(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 <sub>10</sub>	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

(f) (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 PM<sub>10</sub> in a serious PM<sub>10</sub> 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.

(g) (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.

(h) (i) Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

(i) (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) The emissions calculated under the actual to projected actual test stated in subsection (c)(3).

(D) 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. The general public may request this information from the department 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.**

~~(6)~~ (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) the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions in clause (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:

**(i) 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~~**

**(ii) all available offsets are being used; and ~~that~~**

**(iii) 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 in Nonattainment Areas**

**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)** 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 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) 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. This section applies to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. A source that is subject to P.L.231-2003, 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 section.

**(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 considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

**(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. The emissions units must be in compliance with the following:

**(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 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 or work practices, and that meets both of 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 the 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:

(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.

(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:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day LAER under subsection (c)(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 (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(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 (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 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 that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(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. 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) 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. 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 determination 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 described 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 the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance 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 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.

(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 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) 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.231-2003, 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 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 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 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 considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). 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 (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). 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 or work practices, that meets both of 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 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 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) 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 LAER, 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 LAER for purposes of subsection (c)(1) in accordance with the following:

(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 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 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 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 approval 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 2-7-12:**

**(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.**

**(2) Effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval 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, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is 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 approval, then the approval 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, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is 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 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 described 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 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 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; 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.

(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'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 in Nonattainment Areas**

#### **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.231-2003, 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 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 2-3-1(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, 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 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 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, except in an area that is classified as either serious or severe nonattainment for ozone, the significant net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. In addition, 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. In addition, 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 in Nonattainment Areas**

**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.231-2003, 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<sub>x</sub> 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, that level meets the requirements in this rule, and that 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).

**(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 2-3.4-1*)

**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” 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 under section 11 of this rule 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 regulated NSR 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 Establishing PALs; general requirements

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 requirements 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:

(1) established;

(2) renewed;

(3) increased;

(4) terminated; or

(5) 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 10 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, except modifications to existing 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 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 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 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 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 2-3.4-8)*

**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 PAL 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 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 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 during the PAL effective period 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 nonattainment 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 must be revised to reflect the increased PAL level under 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 to the department 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) 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 2-3.4-15*)

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:

(1) construct new emission units;

(2) modify existing emission units; or

(3) 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 acknowledgment 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<sub>10</sub>).

(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<sub>2</sub>).

(ii) Nitrogen oxides (NO<sub>x</sub>).

(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 (H<sub>2</sub>S).

(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 (PM<sub>10</sub>).

(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)~~ (3) 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)~~ (3) 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<sub>x</sub>, 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<sub>x</sub>.

(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 ( $PM_{10}$ ).

(B) Sulfur dioxide ( $SO_2$ ).

(C) Nitrogen oxides ( $NO_x$ ).

(D) Volatile organic compounds (VOC).

(E) Hydrogen sulfide ( $H_2S$ ).

(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:

- (1) modification application;
- (2) draft modification approval;
- (3) proposed modification approval; and
- (4) 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:**

**(A) an exempt unit as described in 326 IAC 2-1.1-3;**

**(B) an insignificant activity as defined in 326 IAC 2-7-1(21); or**

**(C) 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:**

**(A) addition;**

**(B) renewal;**

**(C) termination;**

**(D) revocation; and**

**(E) 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 Public Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on June 2, 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 proposed new rules and amendments to 326 IAC 2.*

*The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed 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 Christine Pedersen, Rule 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 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.*

Janet G. McCabe

Assistant Commissioner  
Office of Air Quality