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TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

#04-182(APCB)

DEVELOPMENT OF NEW RULES CONCERNING COMPLIANCE ASSURANCE MONITORING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules in 326 IAC 3 concerning compliance assurance monitoring. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 3.

AUTHORITY: IC 13-14-8; IC 13-17-3; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rulemaking is to incorporate federal compliance assurance monitoring (CAM) requirements under 40 CFR 64 into the state rules and to include certain state requirements, such as the submittal of compliance response plans and quarterly monitoring reports, that are now implemented under other authorities, so that the compliance monitoring requirements are contained in one primary state rule.

Section 114(a)(3) of the Clean Air Act (CAA) required the U.S. EPA to develop regulations for monitoring of certain units at major sources that are required to obtain permits pursuant to 40 CFR Part 70 (Title V). U.S. EPA issued its final rule, Compliance Assurance Monitoring, 40 CFR Part 64, on October 22, 1997 (62 FR 54900). This federal regulation applies to Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR 64. The federal CAM rule was challenged legally regarding enhanced monitoring, the phase-in time of the rule, and credible evidence by NRDC v. EPA, 194 F.3d 130, September 9, 1999. The court held that the requirements of enhanced monitoring comply with the CAA and the phase-in time is reasonable, clearing the way for states to incorporate these federal requirements into state rules.

Alternatives To Be Considered Within the Rulemaking

This rulemaking will consider adoption of federal compliance assurance monitoring requirements (62 FR 54900). The following options are available to Indiana:

Alternative 1. Adopt the federal requirements either as an incorporation by reference or full text into the state rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Adopt the federal rules either as incorporation by reference or full text, with additions to address specific concerns in Indiana.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes, except for any variations proposed to be adopted into the state rules.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law, except for any variations proposed to be adopted into the state rules.
- If it is a federal requirement, is it different from federal law? No, however variations could be proposed for consistency with current Indiana rules and policies.
- If it is different, describe the differences. See below.

Variations to the federal language that Indiana could consider under this alternative include the following:

- Add language to the federal CAM rule that would require quarterly monitoring reports rather than the Part 70

semiannual reports. The federal CAM rule refers to the semiannual reporting under Part 70, but the state rules, in 326 IAC 2-7-5, require reporting *at least* semiannually. Therefore, state rules that continue to require quarterly reporting is not precluded. Indiana currently requires quarterly reporting in certain permits. The more frequent reporting schedule provides the source and IDEM with more timely information that can identify potential problems.

- Add language that would clarify the requirements for responding to monitoring excursions and exceedances. This language could include a requirement to have a compliance response plan, and could create a violation for failing to take a response step. The federal rule does require the owner or operator to return the process or control equipment to normal or usual operation, but does not require the preparation of a compliance response plan. It is not clear in the federal rule whether inaction is a violation, but language is provided that indicates that a permitting agency can make a determination about whether the owner or operator took appropriate steps in response to an excursion or exceedance. If a determination is made that inappropriate steps were taken, the agency can require that an owner or operator prepare and submit a Quality Improvement Plan for approval. Although not stated in the federal rule, the owner or operator could also be cited for failure to comply with the requirement to return control equipment to normal or usual operation, if appropriate actions are not taken. IDEM currently has the authority to require the submission of compliance response plans under Section 114(a)(I) of the Clean Air Act and state authority under IC 13-17-3-4. The specific regulatory requirement is found in 326 IAC 2-7-4(c). The information submitted in the compliance response plan will help ensure that the final compliance monitoring conditions in the permit will be more realistic and achievable. In addition, owners or operators will have information available to them that can indicate potential problems in emission control performance and they can act on that information in a timely fashion to avoid or reduce emission control problems that could result in excess emissions.

Alternative 3. Take no action to adopt the federal rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Because CAM is an applicable requirement, IDEM does not have to adopt the rule, although at least incorporating it by reference would make it clear that IDEM does have state authority to implement CAM.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

This rulemaking is based on the federal CAM rule as published in the Federal Register on October 22, 1997 (62 FR 54900). This federal rule implements compliance assurance monitoring (CAM) for major stationary sources of air pollution that are required to obtain operating permits under Title V of the Clean Air Act (CAA). Subject to certain exemptions, the new regulations require owners or operators of these sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements under the CAA.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The federal CAM requirements must already be met by sources to which the federal rules apply. Incorporation by reference or full text incorporation into the state rules will not have a fiscal impact beyond that already imposed by the federal rules.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact from the incorporation of the federal CAM rules into the state rules. The variations under consideration should not impose a significant fiscal impact because these variations are already implemented by the department under other authorities.

Potential Fiscal Impact of Alternative 3. If no action is taken, then there would be no fiscal impact.

Public Participation and Workgroup Information

A list of interested parties was compiled during early rulemaking steps of a related rule action (LSA #01-408). Interested parties will be invited to meet with IDEM as needed to discuss issues involved in this rulemaking. If you wish to attend meetings or have questions about the meetings, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana), or by email at cpederse@dem.state.in.us. Please provide your name, phone number and email address, if applicable, where you can be contacted.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#04-182(APCB) Compliance Assurance Monitoring
Christine Pedersen
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 2, 2004.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Janet McCabe
Assistant Commissioner
Office of Air Quality