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

### **SECOND 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) has developed draft rule language for a new rule 326 IAC 3-8 concerning compliance assurance monitoring. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

### **HISTORY**

First Notice of Comment Period: July 1, 2004, Indiana Register (27 IR 3349).

**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 by reference federal compliance assurance monitoring (CAM) requirements under 40 CFR Part 64 into the state rules so that the compliance monitoring requirements are contained in one primary state rule. The final rule (62 FR 54899 October 22, 1997) for the federal CAM requirements also includes language from 40 CFR 70.6. This language outlines compliance certification requirements for Title V sources. In order to give those sources reasonable opportunity to examine the language and comment on it, 40 CFR 70.6 will be incorporated into the state rules during a future rulemaking. This rulemaking will only incorporate by reference 40 CFR Part 64 and will add definitions to clarify certain internal references.

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 54940). This federal regulation applies to Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR Part 64. The federal CAM rule was challenged legally regarding enhanced monitoring, the phase-in time of the rule, and credible evidence in *National Resource Defense Council vs. U.S. EPA*, 194 F.3d 130 (1999). The court held that the requirements of enhanced monitoring comply with the CAA, the phase-in time is reasonable, and that the credible evidence was not reviewable. The court ruling cleared the way for states to incorporate these federal requirements into state rules.

#### **IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

#### **Potential Fiscal Impact**

The federal CAM requirements must already be met by sources to which the federal rules apply. Incorporation by reference of the federal CAM rule into state rules will not have a fiscal impact beyond that already imposed by the federal rules.

#### **Public Participation and Workgroup Information**

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Mr. Sky Schelle, Rules Section, Office of Air Quality at (317) 234-3533 or (800) 451-6021 (in Indiana).

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

IDEM requested public comment from July 1, 2004, through August 2, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

American Electric Power (AEP)

Citizens Gas & Coke Utility (CGC)  
Dominion State Line Energy, LLC (DSL)  
Eli Lilly and Company (ELC)  
Indiana Electric Utility Air Work Group (IEU)  
Indiana Manufacturers Association (IMA)  
NiSource (NIS)  
NUCOR Steel (NS)

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

#### Incorporation by reference

*Comment:* IDEM should adopt the federal Compliance Assurance Monitoring (CAM) rules, 40 CFR Part 64, into the state rules with no additional modifications. (ELC)

*Comment:* If IDEM chooses to go beyond the federal requirements, IDEM should convene a workgroup to discuss the issues prior to proceeding with a preferred approach or development of proposed rule language. The workgroup could develop proposed rule language and a workable approach, including implementation procedures, that address the concerns of all parties. (NIS, IMA, DSL, IEU)

*Comment:* IDEM should adopt the federal requirements either as an incorporation by reference or full text into the Indiana Administrative Code. The plan already required under the federal CAM rule is sufficient and maximizes the flexibility for both IDEM and the regulated community to enact the appropriate CAM requirements. IDEM should not adopt changes to the federal requirements as described in the First Notice and the alternative of taking no action is not a reasonable approach for IDEM to pursue. Some of IDEM's claims in the Potential Fiscal Impact Analysis may not be accurate for some alternatives mentioned. (AEP)

*Comment:* IDEM should either choose to incorporate the federal requirements by reference, or take no action to adopt the federal rules since CAM is already an applicable requirement. Adoption by reference is preferred because it makes the requirements clearer. Adoption with changes to the federal requirements should not be selected by IDEM because it is not necessary to add a compliance response plan to ensure proper monitoring. The federal CAM rule already contains Quality Improvement Plan (QIP) requirements. (NS)

*Comment:* There are no circumstances that are unique in Indiana that would justify developing a program that is separate from the federal program. Indiana-specific requirements, such as additional requirements for compliance response plans should not be included. Different requirements in different states cause confusion and difficulty. Including Indiana-specific requirements would put Indiana at a competitive disadvantage with other states that simply adopt the federal standards. It has not been demonstrated that any substantial environmental benefit would be gained by going beyond the federal CAM rule. (IEU)

*Response:* IDEM has taken the comments under consideration and proposes to incorporate by reference 40 CFR 64, Compliance Assurance Monitoring.

#### Adding additional reporting requirements

*Comment:* The language currently found in 40 CFR 64.9(a)(1) should be adopted or modified to require the owner or operator to submit monitoring reports at least every 6 months to the permitting authority. This additional language would make the CAM rule consistent with state permitting rules found in 326 IAC 2-7-5(3)(C)(i). It would also provide flexibility for quarterly reporting as well as less frequent, semiannual reporting for low risk sources that have demonstrated good performance of the emission unit and associated control device. In the future, IDEM could offer a reduction in reporting frequency incentive for maintaining a high degree of compliance or a high margin of compliance. (ELC)

*Comment:* The addition of a requirement for quarterly reports is unnecessary since the federal CAM rule requires that reports be submitted in accordance with Part 70, which then requires the owner or operator to follow the approved state plan. IDEM can specify quarterly monitoring reports if necessary in a source's permit. (NS, CGC)

*Response:* IDEM will not add draft language that mandates quarterly reporting. Rather, IDEM will incorporate the language under 40 CFR 64.9(a)(1) that references the Part 70 reporting requirements under 326 IAC 2-7-5(3)(C)(i). The Part 70 language requires reports "at least every six (6) months" and allows the agency to require quarterly reporting where appropriate.

#### Compliance response plans (CRP)

*Comment:* The federal CAM rule should be administered in Indiana as is with no addition of a CRP. Preparing a CRP is a resource burden requiring sources to identify all likely causes of potential failure, identify appropriate response steps for each of the likely causes of failure, and then document whenever something varies from the scenario contemplated by the CRP. The critical question is "was the deviation corrected," not how the deviation was corrected.

For a deviation, the source is required to engage in an extensive paperwork exercise notifying IDEM of the deviation, that the deviation was not in the CRP plan, and that a variant procedure was used. While it is perhaps helpful for IDEM to know that the source had a problem and addressed it, this information should already be in the semiannual reporting required by Part 70. Resources devoted to developing the plan, preparing the reports, and trying to determine whether a deviation "deviated" from the CRP are resources that are not available for preventative or corrective maintenance and hence the CRP is counterproductive on a practical

level.

The CRP is redundant, it switches the focus from compliance with standards to compliance with administrative steps. The CRP proposal should be dropped and existing CRP provisions removed from permits in due course. (NS, CGC, ELC)

*Comment:* The justification for adopting the federal rule with changes suggests that the federal CAM rule does not clarify whether inaction is a violation, and thus justifies the need for the CRP provision. This argument reveals that IDEM is actually seeking a fundamental change in the Indiana air regulations and not merely seeking to fine tune a monitoring program. Under the CRP proposal, compliance is no longer based on whether the source is protecting the environment, but instead on whether the source has met certain IDEM procedural requirements. Under this proposal, much time will be wasted in determining whether a deviation occurred, whether the source's response conformed to the CRP plan, and, if not, whether the source has adequately accounted for the deviation from the CRP. The CRP plan requirement is counterproductive because it substitutes "did the source follow its plan" for the more important inquiry "did the source solve the problem".

The QIP provision of the CAM rule does allow IDEM to require that a QIP be changed if it fails to address the cause of a problem or fails to correct a problem.

Adoption of the federal rule with changes suggests that the federal CAM rule does not require the source to "return the control equipment to normal and usual operation." Yet, the QIP provision requires that the QIP threshold be developed so that the "emissions unit is being maintained and operated in a manner consistent with good air pollution control practices." For an emissions unit to operate in a manner consistent with good air pollution control practices, it would have to be returned to normal and usual operation. IDEM can also require the QIP to be changed if the QIP procedures fail to correct the control device performance "with good air pollution control practices," which can include returning the equipment to normal and usual operation. The QIP provision allows IDEM to require the necessary response steps to any monitoring exceedances or excursions without requiring an additional response with a CRP. A CRP and QIP requirement will only be confusing to the permittee and burdensome if the owner or operator must develop and implement both plans. (NS, ELC)

*Response:* As stated, IDEM proposes to incorporate by reference the federal CAM rule. The federal CAM rule does not require a CRP. It should be noted that 40 CFR 64.7(d)(1) requires that the owner or operator must take necessary steps, including corrective action, to return the operation of the emissions unit and associated control equipment to normal or usual operation in the event of an excursion or exceedance. IDEM will have the opportunity to determine whether the owner or operator used acceptable procedures under 40 CFR 64.7(d)(2) and based on this determination assess the need for a quality improvement plan as provided at 40 CFR 64.8. Placement within Title 326

*Comment:* Although IDEM has not stated where the Part 64 CAM rules would be incorporated into the Title 326 regulations, it should be pointed out that Article 3 currently contains General Provisions which would not be appropriate for or consistent with the CAM provisions. The definitions, certification requirements, and conversion factors included in 326 IAC 3-4 currently apply to all rules under Article 3. If IDEM's intention is to include the CAM rules in Article 3, IDEM is urged to clarify that the definitions and other general provisions in Article 3 do not apply to the CAM Rule. (ELC)

*Response:* Article 3 is titled 'Monitoring Requirements'. IDEM has reviewed the general provisions under 326 IAC 3-4 and does not believe that those provisions would be inconsistent or inappropriate with the CAM rule. New rule 326 IAC 3-8 will be titled 'Compliance Assurance Monitoring Requirements'. IDEM will work to address any specific issues with locating the CAM rule in Article 3 that commentors can identify.

## REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-182(APCB) CAM Rule

Sky Schelle Mail Code 61-50

c/o Administrative Assistant

Rules Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204.

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

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

## COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 1, 2005.

Additional information regarding this action may be obtained from Mr. Sky Schelle, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

## **DRAFT RULE**

SECTION 1. 326 IAC 3-8 IS ADDED TO READ AS FOLLOWS:

### **Rule 8. Compliance Assurance Monitoring Requirements**

#### **326 IAC 3-8-1 Applicability; incorporation by reference of federal standards**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12

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

**Sec. 1. (a)** This rule applies to Title V sources unless specifically exempted in the applicability section of 40 CFR 64.2.

**(b) References to:**

- (1) "section 70.6(a)(i) of this chapter" shall mean 326 IAC 2-7-5(3)(A);
- (2) "section 70.6(a)(3)(i)(B) of this chapter" shall mean 326 IAC 2-7-5(3)(A)(ii);
- (3) "section 70.6(a)(3)(ii) of this chapter" shall mean 326 IAC 2-7-5(3)(B);
- (4) "section 70.6(a)(3)(iii) of this chapter" shall mean 326 IAC 2-7-5(3)(C);
- (5) "section 70.7(f)(1)(i) of this chapter" shall mean 326 IAC 2-7-9(a)(1);
- (6) "section 70.7(f)(1)(iii) of this chapter" shall mean 326 IAC 2-7-9(a)(3)(A) and 326 IAC 2-7-9(a)(3)(B); and
- (7) "section 70.7(f)(1)(iv) of this chapter" shall mean 326 IAC 2-7-9(a)(3)(C).

**(c)** The air pollution control board incorporates by reference 40 CFR 64, "Compliance Assurance Monitoring; Final Rule"\*.

\*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 also 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 3-8-1)

### ***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on October 5, 2005, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on new rule 326 IAC 3-8.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule 326 IAC 3-8. 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 Mr. Sky Schelle, Rules Development Section, Office of Air Quality, (317) 234-3533 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*

*Indianapolis, Indiana 46204*

*or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

