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TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-267(APCB)

DEVELOPMENT OF NEW RULES CONCERNING NEW RULES FOR LOWER-REID VAPOR PRESSURE FUEL IN CENTRAL INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules in 326 IAC 13 concerning lower-Reid vapor pressure (RVP) gasoline requirements in the nine (9) ozone nonattainment counties in Central Indiana. 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 13-4.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In the April 30, 2004, Federal Register (69 FR 23858), the United States Environmental Protection Agency (U.S. EPA) designated nine (9) counties in the Central Indiana region as nonattainment for the eight-hour ozone National Ambient Air Quality Standard (8-hour standard). The affected counties are: Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby. In addition, on January 5, 2005, U.S. EPA designated Hamilton, Hendricks, Johnson, Marion, and Morgan counties in Central Indiana as nonattainment for the fine particulate (PM_{2.5}) standard (70 FR 944).

Ozone is not emitted directly into the air but is created by a chemical reaction between oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) in the presence of heat and sunlight. While ozone that occurs naturally in the stratosphere approximately 10 to 30 miles above the earth's surface forms a layer that protects life on earth from the sun's harmful rays, ground-level ozone contributes to a variety of health problems. Ozone is a lung irritant and can be harmful, especially for people with asthma or other respiratory problems. Ozone also damages plants and ecosystems and reduces visibility.

Ozone and the pollutants that form ozone, NO_x and VOC, can be transported hundreds of miles from the pollution sources. Motor vehicle exhaust, industrial emissions, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC that help to form ozone. Sunlight and hot weather cause ground-level ozone to form in harmful concentrations in the air. As a result, ozone is known as a summertime air pollutant. Indiana's ozone season is April 1 to September 30.

U.S. EPA had a long established one-hour standard for ozone. In the July 18, 1997 Federal Register (62 FR 38856), U.S. EPA published a revised eight-hour ozone standard. This standard is more protective of public health and more stringent than the one (1) hour standard. The rule was challenged in several court cases, remanded back to U.S. EPA, and the cases were settled. U.S. EPA published nonattainment designations for the 8-hour standard on April 30, 2004 (69 FR 23858) that became effective on June 15, 2004. Each state must put control measures into place in order to bring these areas into attainment by June 15, 2009. The one (1) hour ozone standard was revoked on June 15, 2005.

A nonattainment designation means that ozone levels, measured by air monitors in the area, have exceeded federal health standards on at least some days during the summer ozone season in recent years. The ozone designations are based on monitoring data collected in 2001-2003. The 8-hour standard is 85 parts per billion (ppb) and is based on an average of the annual fourth-highest daily maximum 8-hour ozone value over a three year period. Counties with values exceeding this standard are considered to be in violation of the standard.

A nonattainment designation triggers planning requirements for existing sources of air pollution, stricter requirements for certain types of new and expanding facilities that emit air pollution, and certain changes in transportation planning and funding and, potentially, additional clean air measures. Indiana must develop a plan by June 15, 2007, detailing the steps necessary to comply with the standard by the attainment date. Although new national and regional controls, including the nitrogen oxides control rule for power plants, new diesel engine standards, and new diesel fuel standards, will help improve air quality in Central Indiana, additional controls may be necessary in order for the area to attain the standard.

IDEM is working with citizens, local government, businesses, and other interested groups to develop a strategy that will achieve

attainment in Central Indiana with feasible and cost-effective programs. IDEM established the Central Indiana Air Quality Advisory Group (CIAQAG) in September 2003 to study alternatives for inclusion in the Central Indiana state implementation plan (SIP). The CIAQAG has met monthly and heard numerous presentations on options to reduce ozone to meet the new air quality standard. Discussions focused on alternatives for the control of volatile organic compounds (VOCs) locally because of the importance of VOCs in the creation of ozone locally. Adoption of multiple regulatory strategies will likely be required in Central Indiana to achieve the necessary emission reductions. The strategies will have different costs and will affect different constituencies. One of the regulatory measures considered, and the subject of this rulemaking, is implementing a lower RVP fuel requirement in the nine county Central Indiana region during certain months of the year. Currently, Central Indiana is provided with gasoline with a Reid vapor pressure of 9.0 pounds per square inch (psi). IDEM proposes the use of a lower-Reid vapor pressure gasoline of 7.8 or 7.0 psi to provide VOC reductions. Fuel with a lower RVP reduces VOCs by reducing aromatic hydrocarbon emissions from gasoline. These reductions could provide an annualized reduction of VOCs of up to 932 tons per year from on-road mobile sources alone. Additional reductions from other sources such as non-road equipment and portable containers have not been quantified yet. In addition, the CIAQAG is considering a lower RVP fuel rule as a potential control to help Central Indiana attain the fine particulate (PM_{2.5}) standard though additional technical research is necessary to validate the potential benefits.

State adoption of lower RVP gasoline requirements is controlled by section 211(c)(4) of the Clean Air Act. This section prohibits states from requiring a different fuel or fuel additive if U.S. EPA has a federal program already in place. This preemption does not apply if the state control is identical to the federal control. U.S. EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the primary or secondary NAAQS that the plan implements. U.S. EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. Therefore, Indiana must satisfy the requirements of the waiver request provisions in order to have a lower RVP fuel rule approved into the SIP.

The waiver request requires the following information:

- Identification of the quantity of reductions needed to reach attainment.
 - Identification of possible other control measures and the quantity of reductions each would achieve.
 - Explanation in detail, with adequate factual support, which of those identified control measures are considered unreasonable or impracticable.
 - Demonstration that even with the implementation of all reasonable and practicable measures, the state would need additional emissions reductions for timely attainment, and the state fuel measure would supply some or all of such additional reductions.
- IDEM will be compiling documentation to support a waiver request to U.S. EPA during the rulemaking process.

The Clean Air Act requires that states develop measures to bring nonattainment areas into attainment. This rule is one measure to bring the Central Indiana area into attainment for the 8-hour ozone standard. In order to demonstrate attainment in Central Indiana by June 15, 2009, controls would need to be implemented by the summer of 2006 to provide three years of data prior to the attainment date. This rule is being initiated now to complete the necessary rulemaking process as quickly as possible, even if the control cannot be in place prior to the start of the 2006 ozone season. The rule will be submitted to U.S. EPA for approval into the state implementation plan (SIP) and will guide air pollution control efforts in the nine (9) affected counties in Central Indiana.

IDEM is seeking comments from potentially affected parties in the nine county Central Indiana region on the following issues:

- The type of lower RVP gasoline (7.8 or 7.0 psi) appropriate for Central Indiana.
- The appropriate timeframe during which lower RVP fuel should be required in Central Indiana.
- The timing of implementation of this rule and other control measures to demonstrate attainment in Central Indiana by June 15, 2009.
- Any other issues related to this rulemaking.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Add new rules to 326 IAC 13 requiring use of gasoline with a lower-Reid vapor pressure of either 7.8 or 7.0 psi in the nine county Central Indiana region.

- 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? This alternative is not imposed by federal law and there is no comparable federal law. It is a “state- only” requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Require use of a lower-Reid vapor pressure gasoline in Central Indiana during certain months of the year to address ozone or extend the season to address PM_{2.5} as well.

- 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? This alternative is not imposed by federal law and there is no comparable federal law. It is a “state- only” requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.

- If it is different, describe the differences. Not applicable.

Alternative 3. No rulemaking.

- 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? No
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences. N/A

Applicable Federal Law

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes) are both applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38856)) contains the standards for criteria pollutants. Ozone is considered a criteria pollutant and air pollution controls reduce emissions of volatile organic compounds (VOC) to reduce ozone formation. 40 CFR 81 (amended on April 30, 2004 (69 FR 23858)) lists the areas of the United States, specific to each state, that U.S. EPA has determined are not attaining the standards (nonattainment) for criteria pollutants such as ozone. Section 211(c)(4) of the Clean Air Act applies to SIP submissions that propose motor vehicle fuel measures as control strategies to reduce ozone.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. IDEM estimates a cost of up to \$0.03 per gallon for a lower RVP gasoline depending on which fuel is selected.

Potential Fiscal Impact of Alternative 2. The cost of this alternative would depend on the timeframe during which a lower RVP gasoline would be required.

Potential Fiscal Impact of Alternative 3. No fiscal impact.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317)232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317)234-3386
elevenha@idem.in.gov

Public Participation and Workgroup Information

The Central Indiana Air Quality Advisory Group (CIAQAG) was established September 2003 to study alternatives for reducing ozone in Central Indiana to demonstrate attainment. This group is comprised of business, government officials, and citizens and has met several times since September 2003 to hear presentations, discuss regulatory and voluntary alternatives to reduce ozone, and make recommendations on alternatives appropriate in Central Indiana. These meetings are open to the public.

At this time, no additional workgroup is planned for this rulemaking, but the department is planning outreach efforts to affected parties during the course of the rulemaking and to provide compliance assistance. If you feel that a workgroup or other informal discussion on the rule is appropriate, or you would like information about the CIAQAG meetings, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

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:

#05-267(APCB) Central Indiana Fuel Rule
Christine Pedersen 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 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 Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 3, 2005.

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).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality