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TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-330(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING COMPLIANCE MONITORING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 3 concerning compliance monitoring and 326 IAC 7-2 concerning sulfur dioxide compliance requirements. 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; 326 IAC 7-2.

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

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This First Notice of Comment Period replaces the previous notice of rulemaking on compliance monitoring, LSA Document #01-408, which has been withdrawn. A new rulemaking is being initiated because of the many changes to the scope of the rulemaking. In particular, the Credible Evidence rule, LSA Document #04-180, and the federal Compliance Assurance Monitoring (CAM) rule, LSA Document #04-182, are now separate rulemakings. In addition, other compliance topics are being considered for this rulemaking as described in this notice. The decision to begin a new compliance rulemaking provides a better opportunity for public participation by interested parties.

IDEM has identified technical corrections and clarifications that are needed in existing rules in 326 IAC 3 and 326 IAC 7 concerning emissions monitoring requirements. IDEM proposes the following:

- Clarification of 326 IAC 3-5 concerning the quality assurance requirements that apply to flow monitors and reinstatement of requirements for reporting malfunctions of continuous monitoring equipment.
- Clarification of data availability requirements concerning continuous emission monitoring systems (CEMS).
- Corrections to 326 IAC 3-6 to include references to source sampling procedures conducted under 40 CFR 61.
- Clarification of requirements in 326 IAC 3-6-5 for source testing to demonstrate compliance with the limit on particulate matter having aerodynamic diameters less than ten microns in diameter (PM₁₀).
- Removal of 326 IAC 7-2-1(f) because it does not adequately address the problem of conflicting test results to demonstrate compliance, and the issue is now addressed by the credible evidence rule in 326 IAC 1-1-6.
- Other corrections or clarifications that may be identified from comments during the course of this rulemaking.

IDEM also proposes a change to monitoring requirements that affect peaking units subject to the acid rain provisions of 40 CFR 75. Peaking units that must operate a CEMS to comply with 40 CFR 60 or 326 IAC 3-5 are currently required to perform an annual relative accuracy test as well as quarterly quality assurance functions pursuant to these rules. Because peaking units are not always operating, a requirement that they be started only to conduct these quality assurance functions is unnecessary. IDEM proposes a revision to 326 IAC 3-5 to allow these peaking units to comply with the Continuous Emission Monitoring provisions in 40 CFR 75 instead of those under the New Source Performance Standards in 40 CFR 60.

This rulemaking will also include changes previously identified by U.S. EPA (February 8, 1994, 59 FR 5742) as deficiencies in order to obtain approval of the monitoring rules into the state implementation plan. U.S. EPA found that language providing "Commissioner's discretion", in some cases, would allow the Commissioner to remove or modify federally enforceable requirements. IDEM plans to modify this language to ensure that the exercise of Commissioner's discretion is accompanied by U.S. EPA approval as a revision to the State Implementation Plan (SIP).

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Making clarifications and corrections to the monitoring 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? Modifying the Commissioner's discretion language

is required by federal law in order for the rules to be approved into the SIP. The other clarifications and corrections are “state-only” requirements.

- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Changing applicable requirements for peaking plants to 40 CFR 75.

- 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 would change the state rule to exempt peaking plants from a testing requirement in state rules in favor of a more appropriate federal requirement.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 60 (Standards of Performance for New Stationary Sources), 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants), 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), and 40 CFR 75 (Continuous Emission Monitoring) are applicable federal laws impacting this rulemaking. 40 CFR 60 contains compliance monitoring requirements for new stationary sources. 40 CFR 61 contains compliance monitoring requirements for sources emitting hazardous air pollutants. 40 CFR 63 contains compliance monitoring requirements for specific source categories emitting hazardous air pollutants. 40 CFR 75 contains continuous emission monitoring requirements.

326 IAC 3 as currently written includes language previously identified by U.S. EPA (February 8, 1994, 59 FR 5742) as deficient. Changes are necessary to obtain approval of the monitoring rules into the state implementation plan.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative should not have a fiscal impact because the amendments would be corrections and clarifications of existing requirements.

Potential Fiscal Impact of Alternative 2. This alternative would save peaking plants the cost associated with starting up and running equipment, conducting tests, and submitting reports at times when the plant would not normally be in operation.

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, W041
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

A list of interested parties has been compiled based on interest shown in the previous notices on this subject. A workgroup will be formed to discuss issues involved in this rulemaking. The workgroup will be made up of IDEM staff and interested stakeholders. Individuals that requested to participate in the workgroup for the Compliance Monitoring rulemaking (#01-408), which is withdrawn, are being included in the workgroup formed for this new rulemaking.

If you wish to be added to the list of interested parties, provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who

represent their particular interests in the rulemaking.

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:

#05-330(APCB) Compliance 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 January 2, 2006.

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