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TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE LSA Document #05-331(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF LAKE COUNTY FOR SULFUR DIOXIDE AND REVOCATION OF THE 1-HOUR OZONE STANDARD IN INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-4-1 concerning the redesignation of Lake County to attainment for sulfur dioxide (SO₂) and the revocation of the 1-hour ozone standard for all areas in Indiana and has scheduled a public hearing before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-4-1.

AUTHORITY: IC 13-14-8; IC 13-14-9-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Redesignation of Lake County to Attainment for SO₂.

Based on monitored violations, a portion of Lake County in Indiana was designated as primary nonattainment with the SO₂ National Ambient Air Quality Standards (NAAQS) on March 3, 1978 (43 FR 8962). In compliance with the Clean Air Act (CAA), IDEM developed and implemented various rules since that time designed to control emissions of SO₂ in Lake County.

Most recently, IDEM conducted extensive modeling and initiated a rulemaking to make additional amendments to SO₂ requirements for many sources in the nonattainment area that would provide the basis for requesting a redesignation of Lake County to attainment for SO₂. The completed rulemaking became effective in Indiana on June 24, 2005 and reflects a reduction of over 30,000 tons of SO₂ per year of allowable emissions from the emission limits in the 1989 State Implementation Plan. The last violation of the NAAQS for SO₂ was measured in 1980.

U.S. EPA published approval of the Lake County SO₂ rule and Indiana's request to redesignate Lake County to attainment for SO₂ in the Federal Register on September 26, 2005 (70 FR 56129). U.S. EPA approved the maintenance plan for these counties that includes maintaining existing programs and air monitoring. This action was effective October 26, 2005.

At this time, IDEM is proposing to amend Indiana's rules for consistency with the redesignation of Lake County to attainment for SO₂. This redesignation means that new major sources and major modifications at existing major sources will be subject to the Prevention of Significant Deterioration (PSD) rules in 326 IAC 2-2, rather than the more restrictive Emission Offset rules in 326 IAC 2-3. The PSD rules require Best Available Control Technology (BACT) and certain air quality demonstrations including continued compliance with the NAAQS and limits on incremental maximum allowable increases in ambient concentrations of SO₂.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule. In addition, IDEM conducted a public hearing on July 26, 2005 in Gary, Indiana, as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation. U.S. EPA conducted a public process as well when it approved Indiana's redesignation request.

This rulemaking incorporates into state rules the September 26, 2005, final approval for redesignating Lake County to attainment for the SO₂ standard (70 FR 56129). Until this state rulemaking is effective, Lake County will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for these counties will continue to apply to the redesignated area.

Revocation of 1-Hour Ozone Standard and Technical Correction to 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) (Phase 1 Rule).

On April 30, 2004, U.S. EPA published the first phase of its final rule to implement the 8-hour ozone national ambient air quality standard (Phase 1 Rule). At that time U.S. EPA also published 8-hour ozone designations for all areas of the country. For most areas, the 8-hour ozone designations became effective on June 15, 2004. The Phase 1 Rule provided that the 1-hour ozone NAAQS would no longer apply for an area one (1) year following the effective date of the area's designation for the 8-hour ozone NAAQS.

On August 3, 2005, U.S. EPA published a final rule to codify the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations (70 FR 44470). U.S. EPA revised the tables at 40 CFR Part 81 to indicate for which areas the 1-hour standard has been revoked, but retained the 1-hour ozone NAAQS designation and classification status as of the time of the effective date of designation for the 8-hour ozone NAAQS for the purposes of 40 CFR 51.905, Subpart X ("How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?").

These provisions establish that a specific list of applicable requirements (see 40 CFR 51.900(f)) that are in place under the nonattainment or maintenance programs for the 1-hour standard remain in place under the 8-hour standard. These provisions also specify that the 8-hour nonattainment classifications will govern New Source Review rather than the 1-hour classifications that have been revoked.

In the preamble to the June 2, 2003 proposed rule (68 FR 32802), U.S. EPA indicates that while it believes Congress gave U.S. EPA the authority to revise the ozone standard, it does not allow States to remove SIP-approved emission limits and other requirements in NSR permits issued under the 1-hour ozone standard. However, the proposed rule language does not address this issue.

Phase 2 of the 8-Hour Ozone Implementation Rule is anticipated to be published in the Federal Register by the end of this year or early in 2006. This rule may contain additional guidance on the impact of revocation of the 1-hour ozone standard on permitting requirements in affected areas. A separate state rulemaking action will be initiated, if necessary, to conform to the Phase 2 Implementation Rule.

In 40 CFR 81.315, the table entitled "Indiana - Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Indiana. The Evansville, Indianapolis, Louisville, and South Bend-Elkhart areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR Part 51, Subpart X. (40 CFR Part 51, Subpart X, "Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard.")

The August 3, 2005, rule (70 FR 44470) also makes a technical correction to the last sentence in 40 CFR 51.905(c)(1) to reference 40 CFR Part 81, Subpart C as identifying the boundaries of areas and the area designations and classifications for the 1-hour ozone NAAQS that were in place as of the effective date of designation of the area for the 8-hour ozone NAAQS and also eliminates the reservation of Subpart E of Part 81 for the above identification purpose. This final rule was effective September 2, 2005.

Permitting Thresholds and Offset Ratios

Since U.S. EPA has revoked the 1-hour ozone standard for all areas in Indiana, IDEM proposes to incorporate by reference the revocation at 40 CFR 81.315 and the technical correction at 40 CFR 51.905 in order to make state and federal rules consistent.

As a result of revoking the 1-hour ozone standard, new major sources and major modifications at existing major sources in Lake and Porter Counties will no longer be subject to both the requirements for a “severe” ozone nonattainment area and the requirements for “moderate” nonattainment for the 8-hour ozone standard.

Under the definition of “major stationary source” at 326 IAC 2-3-1(aa), new sources in severe ozone nonattainment areas are major stationary sources if they emit or have the potential to emit 25 tons volatile organic compounds (VOCs) per year, and must comply with the permitting requirements for major stationary sources. In a moderate nonattainment area, the major stationary source obligations are triggered if a new source emits or has the potential to emit 100 tons VOC per year.

Modifications in a severe ozone nonattainment area at sources with emission increases that exceed the “de minimis” emission limit of 25 tons VOC per year, as defined in 326 IAC 2-3-1(q), are subject to more restrictive permitting requirements. In a moderate ozone nonattainment area, the emissions increase considered significant that triggers more restrictive permitting requirements is 40 tons VOC per year.

In addition, under the 1-hour ozone standard, major stationary sources in Lake and Porter Counties had to comply with the severe minimum offset ratio of 1.3 to 1 for VOCs in accordance with 326 IAC 2-3-3(a)(5). With revocation of the 1-hour ozone standard, major stationary sources in these counties must comply with the “moderate” nonattainment minimum offset ratio of 1.15 to 1 for VOCs.

Administrative Update

IDEM also proposes to remove two citations in 326 IAC 1-4-1 because they have been incorporated into state rules through updates to the Code of Federal Regulations (CFR) and are no longer needed.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

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. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

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

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking concerning redesignation of Lake County to attainment for sulfur dioxide and revocation of the 1-hour ozone standard as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to:

(a) The attainment designation for SO₂ in Lake County, Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

- (b) The revocation of the 1-hour ozone standard for all areas of the state, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt redesignations as established by the United States Environmental Protection Agency.
- (3) In order to properly apply permitting requirements, Indiana must revoke the 1-hour ozone standard since permitting applicability now depends on attainment status of a given area under the 8-hour ozone standard.
- (4) The public will benefit from prompt adoption of this rule, because:
- (a) It recognizes that air quality in Lake County meets the NAAQS for SO₂ and provides consistency with the federal rule that redesignates Lake County to attainment for sulfur dioxide.
- (b) It provides consistency with the federal rule that identifies areas in Indiana for which the 1-hour ozone standard has been revoked.
- (5) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (6) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

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).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 28 IR 1182, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The air pollution control board incorporates by reference the following documents concerning attainment status designations:

- (1) 40 CFR 81.315* **as amended by:**
(A) 70 FR 44475 (August 3, 2005)*; and
(B) 70 FR 56131 (September 26, 2005)*.
- ~~(2) 66 FR 53665 (October 23, 2001)*.~~
- ~~(3) 68 FR 1370 (January 10, 2003)*.~~
- ~~(4) (2) 69 FR 23858 (April 30, 2004)*.~~

(b) For purposes of permits that are subject to 326 IAC 2-3 due to the designations in subsection ~~(a)(4); (a)(2)~~, notwithstanding 326 IAC 2-3-2(a) and 326 IAC 2-3-2(e), the requirements of 326 IAC 2-3 apply to any permit that:

- (1) would otherwise be subject to 326 IAC 2-3; and
- (2) is issued on or after the effective date of the incorporation of 69 FR 23858.

*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 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167; filed Nov 12, 2004, 12:15 p.m.: 28 IR 1182)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on February 1, 2006, 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 amendments to 326 IAC 1-4-1.

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 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, Rules 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

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.