

Document: Proposed Rule, **Register Page Number:** 29 IR 1253

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TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule LSA Document #04-182

DIGEST

Adds 326 IAC 3-8 concerning compliance assurance monitoring. Effective 30 days after filing with the Secretary of State.

HISTORY

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

Second Notice: July 1, 2005, Indiana Register (28 IR 3057).

Notice of First Hearing: July 1, 2005, Indiana Register (28 IR 3057).

Change of Hearing Notice: October 1, 2005, Indiana Register (29 IR 51).

Date of First Hearing: December 7, 2005.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on July 1, 2005, at 28 IR 3057, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from July 1, 2005, through August 1, 2005, on IDEM's draft rule language. IDEM received comments from the following parties:

Dominion (DOM)

Eli Lilly and Company (ELC)

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

Comment: Dominion supports incorporation by reference of the federal CAM requirements in 40 CFR 64 with only definition changes to clarify certain internal references. (DOM)

Comment: Dominion supports IDEM's conclusion that a Compliance Response Plan (CRP) should not be included in the rule. (DOM)

Comment: Lilly agrees with IDEM's decision to incorporate the federal CAM rules, 40 CFR 64, with no additional modifications. (ELC)

Response: IDEM appreciates support on this rulemaking effort.

Comment: In 326 IAC 3-8-1, Lilly suggests the following language be added to eliminate potential confusion due to differences in the definition of terms: "**For purposes of this rule, the definition given for a term in 40 CFR 64 shall control in any conflict between 326 IAC 3-4-1 and this rule.**". (Lilly)

Response: IDEM is proposing this rule as an incorporation by reference of the federal regulation at 40 CFR 64 in 326 IAC 3-8-1(c), therefore the definitions in the federal regulation should apply in this state rule. IDEM will review the differences in the definitions in 326 IAC 3-4-1 and 40 CFR 64 and resolve any potential conflicts prior to final adoption of this rule.

Comment: In order to clarify the certification requirements associated with the CAM rule, Lilly suggests the language in 326 IAC 3-4-2 be modified as follows:

Sec. 2 Each report submitted under **rules 1 through 7** of this article shall contain certification of truth, accuracy, and completeness. This certification and any other certification required under this article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. **Reports submitted under rule 8 of this article shall meet the certification requirements of 326 IAC 2-7-4(f).**

Response: IDEM is not making revisions to 326 IAC 3-4-2 at this time, but will review this suggestion during the rulemaking currently open to make changes to 326 IAC 3.

Comment: Lilly believes the language in 326 IAC 3-8-1(a) could be modified to improve consistency as follows:

Sec. 1. (a) This rule applies to **pollutant-specific emission units at Title V sources which meet the applicability criteria of 40**

CFR 64.2(a) unless specifically exempted ~~by in the applicability section of 40 CFR 64.2(b).~~

Response: IDEM agrees that the suggested language could be misinterpreted and has revised the language to follow the federal language more closely. The new language reads: **“This rule applies to pollutant-specific emission units at Title V sources that meet the applicability criteria of 40 CFR 64.2, except for backup utility units exempt under 40 CFR 64.2(b).”**.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 7, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of a new rule concerning compliance assurance monitoring at 326 IAC 3-8. No comments were made at the first hearing.

326 IAC 3-8

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 pollutant-specific emission units at Title V sources that meet the applicability criteria of 40 CFR 64.2, except for backup utility units exempt under 40 CFR 64.2(b).

(b) References to:

- (1) “section 70.6(a)(3)(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”*.

*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 Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, 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 a proposed new rule concerning compliance assurance monitoring at 326 IAC 3-8.

The purpose of this hearing is to receive comments from the public prior to final 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. 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, Rule Development 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 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.

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