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TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-351(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ASBESTOS AND LEAD-BASED PAINT PROGRAMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 326 IAC 14-10, 326 IAC 18, and 326 IAC 23 concerning asbestos and lead-based paint license renewals. 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 14-10; 326 IAC 18; 326 IAC 23.

AUTHORITY: IC 4-21.5; IC 13-11-2-158; IC 13-14-8; IC 13-15; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6; IC 22-8-1.1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

U.S. EPA identified asbestos as a hazardous air pollutant and promulgated the Asbestos National Emission Standards for Hazardous Air Pollution (NESHAP) in 40 CFR 61 on April 6, 1973. In 1976, Indiana was delegated the authority from U.S. EPA to enforce the NESHAP for asbestos.

In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (the Act) that mandated a regulatory program to address asbestos hazards in schools. The Act required the U.S. EPA to develop an asbestos plan that provided for the training of persons performing asbestos-related work in schools and to obtain accreditation to demonstrate proficiency as a prerequisite for performing this work. The Act also required states to adopt a state accreditation program that was no less stringent than that described in the federal plan. In 1988, the air pollution control board (board) adopted 326 IAC 18. This new article incorporated the requirements of the federal plan by establishing training requirements and initiating a licensing program for those persons working in Indiana.

On November 28, 1990, Congress enacted the Asbestos School Hazard Abatement Reauthorization Act and expanded the accreditation procedures required for persons who work with asbestos-containing materials in public and commercial buildings as well as schools. In turn, the board expanded the NESHAP renovation and demolition program in 326 IAC 14-10 with specific state requirements and clarification of existing requirements. Continuing annual federal amendments to these rules have been incorporated into the board rules under 326 IAC 18.

House Enrolled Act 1181, enacted in 1997, required IDEM to establish a lead-based paint program to ensure that a person conducting lead-based paint activities in certain specified housing and child-occupied facilities does so in a manner that protects the health of the building's occupants, especially children six (6) years of age and younger. This program ensures Indiana's compliance with 40 CFR 745, "Lead: Requirements for Lead-Based Paint Activities in Target Housing and Child Occupied Facilities; Final Rule (August 29, 1996) and the Toxic Substances Control Act, Section 402.

326 IAC 23 (Lead-based Paint Program) was added by the board in 1998 to require persons or contractors who engage in lead-based paint activities to obtain a license from IDEM by meeting certain requirements. The rule specifies record keeping, work practice standards, testing requirements, and establishes fees for licensing of individuals, contractors, and approval of training courses. The program is similar to the accreditation program for asbestos.

This rulemaking will provide clarification and standardization to the application, notification, and licensing procedures for the asbestos and lead-based paint programs. The department proposes to change the term "accreditation" to "license", correct rule citations to 329 IAC that have been repealed, and amend two (2) definitions in 326 IAC 14-10. Other amendments will restructure the definition section under 326 IAC 18 to mirror the format under 326 IAC 23 and add the department as a certificate holder on contractor insurance certificates. Additionally, notification procedures under 326 IAC 23 will be amended to include facsimile, add clearance examiner to the list of disciplines, and set standards for time lapses between courses. The proposed amendments will allow for better training of individuals involved in both asbestos and lead projects, thereby ensuring greater personal safety for themselves, co-workers, and the general public.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Add amendments to the asbestos NESHAP, asbestos management, and lead-based paint rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes. The amendments to the lead-based paint rules are federal rule requirements. The amendments to the asbestos rules are state only program clarifications. Both are federally authorized programs.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, for the lead-based paint program amendments.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. No amendments made to the 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? No.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences.

Applicable Federal Law

This rulemaking is affected by the following federal laws: 40 CFR 61, National Emission Standards for Hazardous Air Pollutants, Subpart A (General Provisions) and Subpart M (National Emission Standards for Asbestos); 40 CFR 745, Lead-based Paint Poisoning Prevention in Certain Residential Structures; 40 CFR 763, Toxic Substances Control Act, Subpart E (Asbestos-containing Material in Schools) and Subpart G (Worker Protection rule); 29 CFR 1910.134, Occupational Safety and Health Administration (OSHA) Worker Respiratory Protection; 29 CFR 1926.1101, OSHA Occupational Exposure to Asbestos; and 29 CFR 1926.59, OSHA Hazard Communication Standard.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1.

No fiscal impact for Alternative 1.

Potential Fiscal Impact of Alternative 2.

No fiscal impact for Alternative 2.

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

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 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:

#05-351(APCB) Asbestos/Lead-based Paint Licensing
Suzanne Whitmer 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 February 1, 2006.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

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