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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 #06-18(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF DELAWARE, GREENE, JACKSON, VANDERBURGH, VIGO, AND WARRICK COUNTIES FOR 8-HOUR OZONE

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 Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties to attainment for 8-hour ozone 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 forgo 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 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

On April 30, 2004, U.S. EPA published nonattainment designations for twenty-four (24) Indiana counties, entirely or in part, for the 8-hour ozone standard (69 FR 23858). The standard is set at 0.08 parts per million (ppm). Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties were designated as basic nonattainment for the standard. This designation requires Indiana to develop a plan to reduce volatile organic compound (VOC) and oxides of nitrogen (NO_x) emissions and make a demonstration

that the area will meet the 8-hour ozone standard by June 15, 2009.

However, ozone monitoring data and photochemical modeling analyses demonstrate that air quality has met the NAAQS for ozone in Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties in advance of the development of an attainment plan. Air quality in these areas has improved largely as a result of regional oxides of nitrogen (NO_x) reductions from power plants implemented in 2004. As a result, Indiana requested U.S. EPA to change the 8-hour ozone designation for these counties from nonattainment to attainment. Indiana submitted redesignation requests for: Delaware County on August 25, 2005; Greene and Jackson counties on July 15, 2005, with supplemental information submitted on September 6, September 7, October 6, and October 20, 2005; Vigo County on July 5, 2005, with supplemental information submitted on October 20 and November 4, 2005; and Vanderburgh and Warrick counties on June 2, 2005. Included with these requests were summaries of relevant air quality data, evidence of the opportunity for public review of the requests, including public hearings, and a discussion of how the various criteria for redesignation have been met.

U.S. EPA has published approval of Indiana's request to redesignate Delaware County to attainment for 8-hour ozone in the Federal Register on November 16, 2005 (70 FR 69443). Approval for Greene and Jackson counties was published on November 14, 2005 (70 FR 69085), for Vanderburgh and Warrick counties on December 29, 2005 (70 FR 77026), and for Vigo County on January 5, 2006 (70 FR 541).

U.S. EPA's action was based on a review of the five (5) prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act Section 107(d)(3)(E). U.S. EPA concluded that these criteria have been met with respect to the 8-hour ozone standard in Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under Section 110(k) of the Clean Air Act.
3. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. EPA has determined that the maintenance plan for the area has met all of the requirements of Section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under Section 110 and Part D of the Clean Air Act.

At this time, IDEM is proposing to make changes to Indiana's rules for consistency with the federal redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for 8-hour ozone. U.S. EPA has approved the maintenance plans for these counties, which includes maintaining existing programs and air monitoring.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of federal requirements and contains no amendments that have a substantive effect on the scope or intended application of the federal rules. In addition, IDEM conducted public hearings for each of these counties 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 requests.

This rulemaking will incorporate into state rules the final federal approvals for redesignating Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for the 8-hour ozone standard. Until the state rulemaking is effective, these counties will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for these counties continue to apply to the redesignated area.

A technical correction has been made to the list of incorporations by reference in this section. The citation "69 FR 23858" has been changed to "69 FR 23900" to reflect the page on which the actual rule language starts rather than the first page of the entire notice.

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 on concerning redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for 8-hour ozone 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 Indiana 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) The public will benefit from prompt adoption of this rule, because it provides consistency with the federal rule that redesignates Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for 8-hour ozone.
- (4) 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.
- (5) 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 Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1 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 **40 CFR 81.315* as amended by** the following documents concerning attainment status designations:

- ~~(1) 40 CFR 81.315*.~~
- ~~(2) 66 FR 53665 (October 23, 2001)*.~~
- ~~(3) 68 FR 1370 (January 10, 2003)*.~~
- ~~(4) 69 FR 23858 (April 30, 2004)*.~~
- (1) 69 FR 23900 (April 30, 2004)*.**
- (2) 70 FR 44475 (August 3, 2005)*.**
- (3) 70 FR 56131 (September 26, 2005)*.**
- (4) 70 FR 69097 (November 14, 2005)*.**
- (5) 70 FR 69454 (November 16, 2005)*.**
- (6) 70 FR 77042 (December 29, 2005)*.**
- (7) 71 FR 544 (January 5, 2006)*.**

(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~~; **69 FR 23900**.

*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 March 1, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, 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.