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## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **Proposed Rule** LSA Document #06-18

#### **DIGEST**

Amends 326 IAC 1-4-1 concerning redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for the eight-hour ozone standard, the redesignation of Lake County to attainment for the sulfur dioxide standard, and revocation of the one-hour ozone standard. Effective 30 days after filing with the Secretary of State.

#### **HISTORY**

IC 13-14-9-8 Notice and Notice of First Hearing: December 1, 2005, Indiana Register (29 IR 1017). This notice was published as LSA #05-331; however, the content has been moved to this rulemaking.

IC 13-14-9-8 Notice and Notice of First Hearing: February 1, 2006, Indiana Register (29 IR 1766).

Date of First Hearing: March 1, 2006.

#### **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.

#### **REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on February 1, 2006, at 29 IR 1766. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule differs from the draft rule because the draft rule language of another rulemaking, LSA #05-331, has been added to this rule. In the February 1, 2006, Indiana Register publication, the explanation and description for the added incorporation by reference citations were not included, making public comment on the entire proposed rule advisable. The descriptive information explains the reasons for combining the rules and the background information for the rule amendments formerly in LSA #05-331.

##### *Introduction*

This rulemaking includes the incorporation by reference of six recent federal actions. These actions cover the redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties to attainment for the eight-hour ozone standard, the redesignation of Lake County to attainment for sulfur dioxide (SO<sub>2</sub>), and the revocation of the one-hour ozone standard in Indiana. Adoption of these federal rules is necessary in order for IDEM to be able to apply the appropriate permitting rules in the affected counties.

Previously, the Lake County Sulfur Dioxide Redesignation and 1-Hour Ozone Revocation Rule, identified as LSA #05-331, and 8-Hour Ozone Redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties, identified as LSA #06-18, were published as separate rulemakings. However, they have been combined into a single rulemaking and will proceed through the process as the Attainment Redesignations and 1-Hour Ozone Revocation Rule under LSA #06-18. These two rules have been combined because they contain amendments to the same existing rule section (326 IAC 1-4-1), include only incorporation by reference of federal requirements with no additional provisions, and they are now on the same schedule for action by the Air Pollution Control Board (APCB). Merging these two rules allows this board to adopt the amendments at the same time at the preliminary and final adoption hearings and will simplify the processing of the promulgation materials after final adoption. Combining these rules is purely an administrative action and does not change the content of any of the rules.

The draft rule language on the eight-hour ozone redesignations published in the February 1, 2006, Indiana Register as LSA #06-18 inadvertently included the amendments from LSA #05-331, but without the background information explaining the reasons for the additional citations. Therefore, in accordance with IC 13-14-9-4.5 and in order to provide proper notice to all interested parties, the background information is printed in this notice.

##### *8-Hour Ozone Redesignation*

On April 30, 2004, U.S. EPA published nonattainment designations for 24 Indiana counties for the eight-hour ozone standard, including Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties. This designation requires Indiana to develop a plan

to reduce emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>), and to make a demonstration that the area will meet the eight-hour ozone standard by June 15, 2009. Until the state rulemaking is effective, these counties will be subject to the state's nonattainment rules, including the permitting rules. Further information on this action was published in the Indiana Register on February 1, 2006 (29 IR 1766).

#### *Redesignation of Lake County to Attainment for SO<sub>2</sub>*

Based on monitored violations, a portion of Lake County in Indiana was designated as primary nonattainment with the SO<sub>2</sub> 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 SO<sub>2</sub> in Lake County.

Most recently, IDEM conducted extensive modeling and initiated a rulemaking to make additional amendments to SO<sub>2</sub> requirements for many sources in the nonattainment area that would provide the basis for requesting a redesignation of Lake County to attainment for SO<sub>2</sub>. The completed rulemaking became effective in Indiana on June 24, 2005, and reflects a reduction of over 30,000 tons of SO<sub>2</sub> per year of allowable emissions from the emission limits in the 1989 State Implementation Plan. The last violation of the NAAQS for SO<sub>2</sub> was measured in 1980.

U.S. EPA published approval of the Lake County SO<sub>2</sub> rule and Indiana's request to redesignate Lake County to attainment for SO<sub>2</sub> 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 SO<sub>2</sub>. 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 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 SO<sub>2</sub>.

#### *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 eight-hour ozone national ambient air quality standard (Phase 1 Rule). At that time U.S. EPA also published eight-hour ozone designations for all areas of the country. For most areas, the eight-hour ozone designations became effective on June 15, 2004. The Phase 1 Rule provided that the one-hour ozone NAAQS would no longer apply for an area one (1) year following the effective date of the area's designation for the eight-hour ozone NAAQS.

On August 3, 2005, U.S. EPA published a final rule to codify the revocation of the one-hour standard for those areas with effective eight-hour ozone designations (70 FR 44470). U.S. EPA revised the tables at 40 CFR Part 81 to indicate for which areas the one-hour standard has been revoked, but retained the one-hour ozone NAAQS designation and classification status as of the time of the effective date of designation for the eight-hour ozone NAAQS for the purposes of 40 CFR 51.905, Subpart X ("How do areas transition from the one-hour NAAQS to the eight-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 one-hour standard remain in place under the eight-hour standard. These provisions also specify that the eight-hour nonattainment classifications will govern New Source Review rather than the one-hour classifications that have been revoked.

#### Permitting Thresholds and Offset Ratios

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

As a result of revoking the one-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 eight-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 permitting requirements is 40 tons VOC per year.

In addition, under the one-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 one-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.

#### *Corrections*

IDEM is also proposing a technical correction and removal of obsolete language. First, in the draft rule language, the citation “69 FR 23858” has been changed to “69 FR 23900” to reflect the page of the Federal Register on which the actual rule language starts rather than the first page of the entire notice. Second, two citations in 326 IAC 1-4-1 have been removed because they have been incorporated into state rules through updates to the Code of Federal Regulations (CFR) and are no longer needed in this section.

IDEM seeks comments on the amendments to 326 IAC 1-4-1 on the incorporation by reference of federal rules for redesignation of Lake County to attainment for SO<sub>2</sub> and revocation of the one-hour ozone standard. These comments and the department’s responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#06-18 Redesignations and 1-Hour Ozone Revocation  
Christine Pedersen Mail Code 61-50  
c/o Administrative Assistant  
Rule 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 receptionist on duty at the Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (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 Rule Development Section at (317) 233-0426.

#### **COMMENT PERIOD DEADLINE**

Comments in any form must be postmarked, hand-delivered, or faxed by April 24, 2006.

#### **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On March 1, 2006, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 1-4-1. No comments were made at the first hearing.

#### **326 IAC 1-4-1**

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 **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 Public 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 May 3, 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 proposed amendments to 326 IAC 1-4-1.*

*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 rules. 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