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TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-268(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING OPEN BURNING FOR FIRE EXTINGUISHER TRAINING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 4-1 to provide exemptions for additional fuels used for fire extinguisher training. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: October 1, 2005, Indiana Register (29 IR 151).

Second Notice of Comment Period: May 1, 2006, Indiana Register.

CITATIONS AFFECTED: 326 IAC 4-1-3.

AUTHORITY: IC 13-15-2-1; IC 13-17-3-4; IC 14-17-9-1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IDEM is proposing amendments to the open burning rules under 326 IAC 4-1-3 to allow the use of natural gas, propane, and methane in addition to clean petroleum products for fire extinguisher training. Currently portable containers filled with not more than fourteen (14) gallons of fuel such as kerosene, gasoline, or diesel fuel are allowed for fire extinguisher training. Adding natural gas, methane, or propane at 326 IAC 4-1-3(c)(8)(D) and 326 IAC 4-1-3(c)(8)(E) provides sources subject to the rule with the ability to use alternative clean burning fuels. Consistent with the fourteen (14) gallons of clean petroleum products daily usage limit currently in the rule, IDEM proposes that natural gas and methane daily usage be limited to twenty-nine thousand seven hundred (29,700) cubic feet and the amount of propane daily usage be limited to two hundred twelve (212) gallons to limit oxides of nitrogen (NO_x) emissions. These usage limits ensure that NO_x emissions from propane, methane, and natural gas will not exceed the amount of NO_x emissions from using fourteen (14) gallons of clean petroleum products.

The Occupational Safety and Health Administration (OSHA) requires fire safety training for employees who are expected to use a fire extinguisher. There are no federal requirements under Title 40, Protection of Environment, of the Code of Federal Regulations (CFR) for U.S. EPA that govern fire extinguisher training. Affected parties will include the affected sources' staff and fire extinguisher training personnel, IDEM compliance staff, local fire and health departments, and adjacent landowners.

IDEM also proposes two (2) updates:

- 1) adding "Vegetation from agricultural land if the open burn occurs in an unincorporated area" at 326 IAC 4-1-3(a)(1)(B) to provide consistency with state statutory changes enacted and effective in 2003 codified at IC 13-17-9-1; and
- 2) amending 326 IAC 4-1-3(c)(3) to update citations to Natural Resources Commission rules to provide consistency with such rules.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The following 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" (NIFL element):

NIFL Element: Allowing the use of twenty-nine thousand seven hundred (29,700) cubic feet of natural gas or methane or two hundred twelve (212) gallons of propane per day (326 IAC 4-1-3(c)(8)) as an exempted fuel for fire extinguisher training.

(1) 326 IAC 4-1-3 was approved into the Indiana state implementation plan (SIP) on February 1, 1996, as part of Indiana's fifteen percent (15%) rate of progress plan control measures for volatile organic compounds (VOC) and is therefore enforceable by the state and U.S. EPA. VOC is one (1) of the air pollutants that contributes to the formation of ground level ozone. Open burning

restrictions are not required under federal law, but Indiana has included open burning restrictions in ozone nonattainment areas as a measure to meet the national ambient air quality standards for ozone. In addition, the Occupational Safety and Health Administration (OSHA) requires fire safety training for employees that are expected to use a fire extinguisher. Under 326 IAC 4-1-3(c)(8), certain types of fires are allowed without written approval from the department. One of these is a fire fueled by clean petroleum products for fire extinguisher training. IDEM received requests to allow the use of natural gas, propane, and methane as acceptable fuels for fire extinguisher training. These three (3) fuels are clean burning similar to “clean petroleum products.” Federal law does not require notification of open burning activities.

(2) One of the companies requesting this rule change, NiSource Inc., states that the cost differential for using natural gas or propane instead of fuels defined as clean petroleum products is minimal in terms of fuel cost. Some unquantifiable savings would likely occur from elimination of disposal fees associated with the small volume of water that is used currently to float the fuels during training. One form of cost savings for the applicant would come from the time saved in preparing and submitting burning applications. This includes time to gather information for inclusion on the forms, time to complete burn variance application forms, notifications to affected parties forms, cover letters, as well as time to prepare and send letters to the county health departments to notify them of the application for the variances. Additional effort and time is spent to check on the status of applications and answer questions during the review. Upon receipt of the final approvals, time is spent to review them and prepare transmittal memos that highlight any new requirements with recommended compliance procedures. For NiSource Inc., this process typically involves three and five-tenths (3.5) staff days for their five (5) requested sites. If the proposed changes are enacted, additional training locations may be requested, saving staff travel time and time away from work.

(3) IDEM relied on the February 1, 1996, Federal Register approval of 326 IAC 4-1-3 into the SIP and the information supplied by NiSource, Inc., (Lake County) in their request to allow the use of natural gas and propane and International Truck and Engine (Marion County) in their request to allow the use of methane as additional acceptable fuels for fire extinguisher training.

Potential Fiscal Impact

This rulemaking is expected to provide cost savings to the regulated community and IDEM in the form of additional approved fuel options for the regulated community and a reduction in the number of open burning approval applications received by IDEM. IDEM does not expect the potential fiscal impact of the draft amendments to exceed \$500,000.

Public Participation and Workgroup Information

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) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from October 1, 2005, through November 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

International Truck and Engine Corp. (ITEC)

NiSource, Inc. (NSE)

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

Comment: We support rule changes to provide an exemption from the requirement to obtain a fire training variance for the use of propane, natural gas, and methane for fire extinguisher training at 326 IAC 4-1-3(c)(8). It will relieve IDEM and the regulated community of unnecessary paperwork burden. (NSE)(ITEC)

Response: IDEM agrees with the request and will add propane, natural gas, and methane to the list of fuels that may be used for fire extinguisher training.

Comment: Amend the definition of clean petroleum products at 326 IAC 4-1-0.5(2) to “clean fuel” and add additional fuels including propane, natural gas, and methane to the list of acceptable fuels. Amend the terminology of “clean petroleum products” to “clean fuel” throughout the rule. (NSE)(ITEC)

Response: The focus of this rulemaking is to add propane, natural gas, and methane to the list of fuels approved for fire extinguisher training at 326 IAC 4-1-3(c)(8). The term “clean petroleum products” is used elsewhere in the rule and to change it would broaden the scope of this rulemaking beyond its original intent.

Comment: At 326 IAC 4-1-3(c)(8)(B) change the language concerning noncombustible container or enclosure to better reflect the intent of using a burn pan intended to prevent soil contamination. We recommend amending “enclosed on all sides with a bottom” to “that has enclosed sides and a bottom”. It is impractical to require the use of a burn pan for these gaseous fuels. Delete the requirement to use a noncombustible container or enclosure for these gaseous fuels when used for fire fighting and fire extinguisher training. (NSE)

Comment: Amend 326 IAC 4-1-3(c)(8)(B) on the use of noncombustible container or enclosure to add “in a manner to prevent contamination of soils or uncontrolled spread of the fire”. (ITEC)

Response: IDEM proposes to amend clause (B) as requested to better describe the burn pan and will not require the use of these

pans for the gaseous fuels.

Comment: We recommend placing no volume limit on the combustion of either propane or natural gas for fire extinguisher training exemption. However, if a limit is included in the rule, we recommend it be based on an equivalence in emissions to the fourteen (14) gallon limit currently in the rule. Installing a fuel meter for fire extinguisher training purposes would be problematic and costly. We would like to work with IDEM to reach a mutually agreeable volume limit and verification methodology. (NSE)

Comment: We recommend exempting natural gas, methane, or propane from the fourteen (14) gallons of fuel burned per day. (ITEC)

Response: IDEM worked with the commentators to reach an agreeable equivalent volume limit equal to fourteen gallons of fuel currently in the rule. IDEM determined that fourteen (14) gallons of gasoline will create two and ninety-seven hundredths (2.97) pounds of NO_x per day. Applying the NO_x emission factor results in equivalency determinations of two hundred twelve (212) gallons of propane and twenty-nine thousand seven hundred (29,700) cubic feet of natural gas or methane. These amounts will be added to the rule at 326 IAC 4-1-3(c)(8). Suggested methods of compliance may include fuel metering or record keeping, although no specific methodology will be specified in the rule.

Comment: Under 326 IAC 4-1-3(c)(8)(A), the notifications to the local fire department and health department should not apply when using either natural gas, propane, or methane in a controlled fashion for fire extinguisher training. (ITEC)

Response: The notifications to the local fire departments are necessary to provide adequate response time if fire extinguisher training fires get out of control and emergency calls need to be made. Local health departments can better answer complaint calls concerning visible smoke if they are adequately notified of the scheduling of training classes. All agencies need to be aware of burning activities being conducted.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#05-268(APCB) Fire extinguisher training
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 receptionist on duty at the tenth floor reception desk, Office of Air Quality, 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 Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 31, 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).

DRAFT RULE

SECTION 1. 326 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-1-3 Exemptions

Authority: IC 13-15-2-1; IC 13-17-3-4

Affected: IC 13-12; IC 13-17-9

Sec. 3. (a) ~~IC 13-1-1-2~~ **IC 13-17-9** exempts certain types of open burning for maintenance purposes listed as follows:

(1) A person may open burn the following:

(A) Vegetation from **any of the following:**

(i) A farm.

- (ii) An orchard.
- (iii) A nursery.
- (iv) A tree farm. ~~or~~
- (v) A cemetery.**

~~(v)~~ **(vi)** A drainage ditch.

(vii) Agricultural land, if the open burn occurs in an unincorporated area.

(B) Wood products derived from **the following:**

(i) Pruning or clearing a roadside by a county highway department.

~~(C) Wood products derived from~~ **(ii)** The initial clearing of a public utility right-of-way so long as the open burn occurs in an unincorporated area.

~~(D)~~ **(C)** Undesirable:

(i) wood structures on real property; or

(ii) wood remnants of the demolition of a predominantly wooden structure originally located on real property; located in an unincorporated area.

~~(E)~~ **(D)** Clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way, but not including railroad ties.

(2) All open burning that is allowed under this subsection must comply with the following conditions:

(A) A person who open burns shall extinguish the fire if the fire creates a nuisance or fire hazard.

(B) Burning may not be conducted during unfavorable meteorological conditions such as **any of the following:**

(i) High winds.

(ii) Temperature inversions. ~~or~~

(iii) Air stagnation.

(C) All fires must be attended at all times during burning until completely extinguished.

(D) All asbestos containing materials must be removed before the burning of a structure.

(E) Asbestos containing materials may not be burned.

(b) The types of fires identified in subsection (c) are allowed under this rule. Unless specified otherwise, the following conditions apply to any fire allowed by this subsection:

(1) Fires must be attended at all times and until completely extinguished.

(2) If at any time a fire creates **a:**

(A) ~~a~~ pollution problem;

(B) ~~a~~ threat to public health;

(C) ~~a~~ nuisance; or

(D) ~~a~~ fire hazard;

it shall be extinguished.

(3) No burning shall be conducted during unfavorable meteorological conditions such as **any of the following:**

(A) High winds.

(B) Temperature inversions. ~~or~~

(C) Air stagnation. ~~or~~

~~(D)~~ **(D)** When a pollution alert or ozone action day has been declared.

(4) All burning shall comply with other federal, state, and local laws, rules, and ordinances.

(5) Adequate firefighting equipment shall be on site for extinguishing purposes during burning times.

(6) Burning shall be conducted during daylight hours only, and all fires shall be extinguished **prior to before** sunset.

(c) The following types of fires are allowed:

(1) Recreational or ceremonial fires, such as fires for scouting activities, and fires used for cooking purposes, such as camp fires, subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) Only:

(i) clean wood products;

(ii) paper;

(iii) charcoal; or

(iv) clean petroleum products;

may be burned.

(B) The local fire department and health department must be notified at least twenty-four (24) hours **prior to before** any burning where the size of the pile being burned is more than one hundred twenty-five (125) cubic feet.

(C) Fires shall:

- (i) not be ignited ~~prior to~~ **before** two (2) hours before the recreational activity is to take place; and ~~shall~~
- (ii) be extinguished upon conclusion of the activity.

(D) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet and only one (1) pile may be burned at a time.

(E) The fires shall not be used for disposal purposes.

(F) Fires shall not take place within five hundred (500) feet of any fuel storage area or pipeline.

(2) Private residential burning, where the building contains four (4) or fewer dwelling units. Burning is prohibited in apartment and condominium complexes and mobile home parks. Beginning June 23, 1995, residential open burning is prohibited in the counties listed in section 4.1(c) of this rule. Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Burning shall be in a noncombustible container that: ~~is:~~

- (i) **is** sufficiently vented to induce adequate primary combustion; and
- (ii) has enclosed sides and a bottom.

(B) Only clean wood products and paper may be burned.

(3) Waste oil burning where waste oil originates from spillage during testing of an oil well and has been collected in a properly constructed and located burn off pit as prescribed in ~~310 IAC 7-1-37(a)~~ **312 IAC 16-5-11** in the ~~department of~~ natural resources ~~(DNR) commission~~ rules. ~~oil and gas operations~~. Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Each oil pit may be burned once every two (2) months.

(B) The fire must be extinguished within thirty (30) minutes of ignition.

(4) **Department of natural resources** (DNR) burning, to facilitate prescribed burning on DNR controlled properties for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; United States Department of the Interior burning, to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore, for example; and United States Department of Agriculture, Forest Service burning, to facilitate wildlife habitat maintenance, forestry purposes, natural area management, ecosystem management, and firefighting or prevention. Burning shall be subject to conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) If the fire creates a:

- (i) nuisance;
- (ii) fire hazard; or
- (iii) pollution problem;

it shall be extinguished.

(B) No burning shall be conducted during unfavorable meteorological conditions, such as **any of the following**:

- (i) High winds.
- (ii) Temperature inversions. ~~or~~
- (iii) Air stagnation. ~~or~~
- (iv) When a pollution alert or ozone action day has been declared.

(C) Only vegetation and clean petroleum products may be burned.

Burning by the U.S. Forest Service for firefighting or prevention is not subject to the conditions in subsection (b) or this subdivision.

(5) Burning of marijuana by federal, state, and local law enforcement offices. Burning shall be subject to the conditions in subsection (b), and only clean petroleum products shall be used for ignition purposes.

(6) Burning, for the purpose of heating, using clean wood products or paper in a noncombustible container that is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) Burning shall only occur between October 1 and May 15.

(B) Burning shall not be conducted for the purpose of disposal.

(7) Burning of vegetation by fire departments and firefighters to create fire breaks for purposes of extinguishing an existing fire. Such burning is not subject to the conditions in subsection (b).

(8) Burning of clean petroleum products, **natural gas, methane, or propane** for fire extinguisher training, subject to the conditions in subsection (b) and the following conditions:

(A) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.

(B) Limits on fuels used for fire extinguisher training include a total of not more than:

- (i) **fourteen (14) gallons of clean petroleum products;**

(ii) two hundred twelve (112) gallons of propane; or
(iii) twenty-nine thousand seven hundred (29,700) cubic feet of natural gas or methane;
may be burned per day.

~~(B)~~ (C) All burning of clean petroleum products shall take place in a noncombustible container or enclosure **that has** enclosed on all sides with **and** a bottom.

~~(C)~~ A total of no more than fourteen (14) gallons of fuel may be burned per day.

~~(D)~~ Only one (1) fire may be allowed to burn at a time.

~~(E)~~ (D) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination **or uncontrolled spread of the fire.**

(E) Only one (1) fire may be allowed to burn at a time.

(Air Pollution Control Board; 326 IAC 4-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2419; filed May 24, 1995, 10:00 a.m.: 18 IR 2408; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3341; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 2, 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 4-1-3.

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 Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 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.