

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2004-IN-0006; FRL-8190-9]

**Approval and Promulgation of Air Quality Implementation Plans; Indiana; NSR Reform Regulations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing partial approval of revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs of the State of Indiana. On December 31, 2002, EPA published revisions to the federal PSD and nonattainment NSR regulations. These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, Plantwide Applicability Limits (PAL), Clean Units, and Pollution Control Projects (PCP).

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. Although the Court did uphold most of EPA's rules, it vacated both the Clean Unit and the PCP provisions. In addition, the Court remanded to EPA provision that requires recordkeeping and reporting for sources that elect to use the actual-to-projected actual emission test only where there is a reasonable possibility that a project may result in a significant net emissions increase. IDEM is seeking partial approval for rules to implement the NSR Reform provisions that have not been vacated by the June 24, 2005, court decision. This action affects major stationary sources in Indiana that are subject to or potentially subject to the PSD or nonattainment NSR construction permit program.

**DATES:** Comments must be received on or before August 9, 2006.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2004-IN-0006, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- E-mail: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
- Fax: (312) 886-5824.
- Mail: Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604.

- Hand Delivery: Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2004-IN-0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886-3189 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3189, [portanova.sam@epa.gov](mailto:portanova.sam@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Is Being Addressed in This Document?
- III. What Are the Changes That EPA Is Approving?
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Reviews

**I. What Should I Consider as I Prepare My Comments for EPA?**

**A. Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**B. Tips for Preparing Your Comments.** When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

## II. What Is Being Addressed in This Document?

We are proposing to approve revisions to the PSD and nonattainment NSR construction permit programs of the State of Indiana. EPA granted full approval to Indiana's nonattainment NSR program on October 7, 1994 (59 FR 51108) and the approval became effective on December 6, 1994. EPA granted conditional full approval to Indiana's PSD program on March 3, 2003 (68 FR 9892), which became effective on April 2, 2003. Subsequently, EPA granted final full approval to Indiana's PSD program on May 20, 2004 (69 FR 29071), which became effective on July 19, 2004.

On December 31, 2002, EPA published revisions to the federal PSD and nonattainment NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, PALs, clean units, and PCPs. As stated in the December 31, 2002, EPA rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). With this submittal, Indiana requests approval of program revisions that satisfy this requirement.

IDEM submitted these regulatory revisions for parallel processing on March 22, 2004, which was prior to final adoption of the State rules. Indiana adopted the final rules on June 2, 2004. These rules were published in the Indiana Register on September 1, 2004. IDEM submitted a final request for approval of these rules into the State Implementation Plan (SIP) on

September 2, 2004 and amended this request in an October 5, 2004, letter to EPA. On October 25, 2005, IDEM submitted a letter to EPA amending this request to exclude action on the Clean Unit and PCP provisions of the state rule.

## III. What Are the Changes That EPA Is Approving?

### Rule 1.1. General Provisions

#### 326 2-1.1-7 (Fees)

Indiana has modified the language in 326 IAC 2-1.1-7(3)(D) to add "comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2" to the existing provision requiring fees for best available control technology (BACT) or lowest achievable emission rate (LAER) control technology analyses. The federal rule does not address requirements on fees that permitting authorities may charge applicants. However, the fee requirement is consistent with the existing fee requirement for BACT and LAER analyses and does not add any additional burdens to sources seeking a BACT or LAER technology comparison for purposes of qualifying for a clean unit designation.

Indiana has added language in 326 IAC 2-1.1-7(3)(F) to require fees for establishing a PAL permit. The rule assesses a fee of \$40 per ton of allowable emissions for each PAL pollutant. The federal rule does not address requirements on fees that permitting authorities may charge applicants. However, Indiana's PAL permit fee is comparable to EPA's presumptive fee rate under Title V of the Clean Air Act (the Act), which is \$38.29, according to the September 17, 2004, EPA memorandum titled "Calculation of the Part 70 Presumptive Minimum Fee Effective from September 2004 through August 2005." Considering the level of detail required for a PAL permit and the amount of resources that a permitting authority may devote to developing a PAL permit, which could be comparable to that of a Title V permit, a fee similar to that required under Title V is acceptable.

### Rule 2. Prevention of Significant Deterioration Requirements

#### 326 IAC 2-2-1 (Definitions)

#### Actual Emissions

Indiana has revised the definition of "actual emissions" in 326 IAC 2-2-1(b) to add the term "regulated NSR pollutant" (see definition below), to revise the language to specify the time frame as a "consecutive twenty-four (24)

month period," and to add language stating that this definition does not apply for calculating a significant emissions increase or for establishing a PAL. The revised definition of "actual emissions" is consistent with the definition in 40 CFR 51.166(b)(21).

#### Baseline Actual Emissions

Indiana has established the definition of "baseline actual emissions" in 326 IAC 2-2-1(e). This is consistent with the definition of "baseline actual emissions" in 40 CFR 51.166(b)(47).

#### Best Available Control Technology

Indiana has modified the definition of "best available control technology" in 326 IAC 2-2-1(i). The language "maximum degree of reduction for each pollutant subject to regulation under the provisions of the CAA" has been replaced with "maximum degree of reduction for each regulated NSR pollutant." This is consistent with the definition in 40 CFR 51.166(b)(12).

#### Clean Unit

Indiana has established the definition of "Clean Unit" in 326 IAC 2-2-1(m). EPA is not taking action on this definition as it relates to the Clean Unit provision.

#### Continuous Emissions Monitoring System

Indiana has established the definition of "continuous emissions monitoring system" in 326 IAC 2-2-1(q). This is consistent with the definition of "continuous emissions monitoring system" in 40 CFR 51.166(b)(43).

#### Continuous Emissions Rate Monitoring System (CERMS)

Indiana has established the definition of "continuous emissions rate monitoring system" in 326 IAC 2-2-1(r). This is consistent with the definition of "continuous emissions rate monitoring system" in 40 CFR 51.166(b)(46).

#### Continuous Parameter Monitoring System (CPMS)

Indiana has established the definition of "continuous parameter monitoring system" in 326 IAC 2-2-1(s). This is consistent with the definition of "continuous parameter monitoring system" in 40 CFR 51.166(b)(45).

#### Emissions Unit

Indiana has modified the definition of "emissions unit" in 326 IAC 2-2-1(u). This definition is consistent with the definition of "emissions unit" in 40 CFR 51.166(b)(7). Included in both the federal and State definition is the

statement that a replacement unit is considered an existing unit under this definition. However, Indiana's rules do not define "replacement unit," which is included in the federal rule at 40 CFR 51.166(b)(32). Indiana sent a letter to EPA on October 4, 2004, clarifying that the State will follow the federal definition of "replacement unit," and committing to add that definition to its PSD rules in a future rulemaking.

#### *Federally Enforceable*

Indiana has established the definition of "federally enforceable" in 326 IAC 2-2-1(w). This is consistent with the definition of "federally enforceable" in 40 CFR 51.166(b)(17).

#### *Lowest Achievable Emission Rate (LAER)*

Indiana has established the definition of "lowest achievable emission rate" in 326 IAC 2-2-1(cc). This is consistent with the definition of "lowest achievable emission rate" in 40 CFR 51.165(a)(1)(xiii).

#### *Major Modification*

Indiana has revised the definition of "major modification" in 326 IAC 2-2-1(ee) to add provisions regarding PCPs and PALs. EPA is not taking action on 326 IAC 2-2-1(ee)(2)(H) since it is a PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.166(b)(2).

#### *Major Stationary Source*

Indiana has modified the definition of "major stationary source" in 326 IAC 2-2-1(gg) to replace the phrase "pollutant subject to regulation under the CAA" with "regulated NSR pollutant." This modification is consistent with the definition in 40 CFR 51.166(b)(1).

#### *Net Emissions Increase*

Indiana has modified the definition of "net emissions increase" in 326 IAC 2-2-1(jj) to be consistent with the definition in the federal rule. EPA is not taking action on 326 IAC 2-2-1(jj)(3)(B) since it is a clean unit provision. EPA is also not taking action on 326 IAC 2-2-1(jj)(6)(D) since it is a Clean Unit and PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.166(b)(3).

#### *Plantwide Applicability Limit (PAL)*

Indiana has established the definition of "plantwide applicability limit" in 326 IAC 2-2-1(kk). This is consistent with the definition in 40 CFR 51.166(w)(2)(v).

#### *Pollution Control Project (PCP)*

Indiana has modified the definition of "pollution control project" in 326 IAC

2-2-1(ll). EPA is not taking action on this definition.

#### *Pollution Prevention*

Indiana has established the definition of "pollution prevention" in 326 IAC 2-2-1(mm). This is consistent with the definition in 40 CFR 51.166(b)(38).

#### *Potential To Emit*

Indiana has modified the definition of "potential to emit" in 326 IAC 2-2-1(nn) to change the term "source" to "stationary source," which is consistent with the definition 40 CFR 51.166(b)(4). Indiana has also changed the term "enforceable" to "enforceable as a practical matter." Indiana's use of the term "enforceable" is consistent with the decision in *Chemical Manufacturers Association v. EPA*, 70 F.3d 637 (D.C. Cir. 1995).

#### *Predictive Emissions Monitoring System (PEMS)*

Indiana has established the definition of "predictive emissions monitoring system" in 326 IAC 2-2-1(oo). This is consistent with the definition in 40 CFR 51.166(b)(44).

#### *Prevention of Significant Deterioration Program*

Indiana has established the definition of "prevention of significant deterioration program" in 326 IAC 2-2-1(pp). This is consistent with the definition in 40 CFR 51.166(b)(42).

#### *Project*

Indiana has established the definition of "project" in 326 IAC 2-2-1(qq). This is consistent with the definition in 40 CFR 51.166(b)(51).

#### *Projected Actual Emissions*

Indiana has established the definition of "projected actual emissions" in 326 IAC 2-2-1(qq). This is consistent with the definition in 40 CFR 51.166(b)(51).

#### *Reasonably Available Control Technology (RACT)*

Indiana has established the definition of "reasonably available control technology" in 326 IAC 2-2-1(tt). This is consistent with the definition in 40 CFR 51.100(o).

#### *Regulated NSR Pollutant*

Indiana has established the definition of "regulated NSR pollutant" in 326 IAC 2-2-1(uu). This is consistent with the definition in 40 CFR 51.166(b)(49), with the exception that some pollutants listed under 326 IAC 2-2-1(xx)(1) are also hazardous air pollutants (HAPs) listed in section 112(b) of the Act. According to the preamble to the

December 31, 2002, NSR rulemaking (67 FR 80240), "State and local agencies with an approved PSD program may continue to regulate the HAP now exempted from federal PSD by section 112(b)(6) if their PSD regulations provide an independent basis to do so. These State and local rules remain in effect unless they are revised to provide similar exemptions." Indiana has included these HAP pollutants in its State PSD rules since prior to the 1990 amendments to the Act, which added the 112(b) HAP exemption. Therefore, Indiana may continue regulating these pollutants in its PSD rules.

#### *Significant*

Indiana has modified the definition of "significant" in 326 IAC 2-2-1(xx) to change the phrase "pollutant subject to regulation under the CAA" to "regulated NSR pollutant." This definition has also been modified to remove the reference to pollutants listed in § 112(b) of the Act because, other than pollutants already listed in 326 IAC 2-2-1(xx), § 112(b) pollutants are exempt from NSR. These changes are consistent with the definition in 40 CFR 51.166(b)(23).

#### *Significant Emissions Increase*

Indiana has established the definition of "significant emissions increase" in 326 IAC 2-2-1(yy). This is consistent with the definition in 40 CFR 51.166(b)(39).

#### *Stationary Source*

Indiana has modified the definition of "stationary source" in 326 IAC 2-2-1(zz) to change the phrase "pollutant subject to regulation under the CAA" to "regulated NSR pollutant." This change is consistent with the definition in 40 CFR 51.166(b)(5).

#### *Minor Revisions to Definitions*

Indiana has made changes to the definitions of "baseline area," "baseline concentration," "building, structure, facility, or installation," "federal land manager," "reactivation of a very clean coal-fired electric utility steam generating unit," and "repowering" that are grammatical in nature and do not change the substance of the definition.

#### *326 IAC 2-2-2 (Applicability)*

Indiana has modified 326 IAC 2-2-2 to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.166(a)(7). EPA is not taking action on 326 IAC 2-2-2(d)(5) since it is a Clean Unit provision. EPA is also not taking action on 326 IAC 2-2-2(f) since it is a PCP provision. The remaining portions of 326 IAC 2-2-2 are

consistent with the requirements in 40 CFR 51.166(a)(7).

#### 326 IAC 2-2-3 (Control Technology Review; Requirements)

Indiana has modified the provision for "control technology review" in 326 IAC 2-2-3 to change the phrase "pollutant subject to regulation under the CAA" to "regulated NSR pollutant." This modification is consistent with federal rule language.

#### 326 IAC 2-2-4 (Air Quality Analysis; Requirements)

Indiana has modified the air quality analysis requirements language in 326 IAC 2-2-4(a), 2-2-4(a)(3), 2-2-4(b)(2), 2-2-4(b)(2)(A), and 2-2-4(b)(2)(B) to include Clean Unit designations for emission units that have not previously received a major NSR permit (see 326 IAC 2-2.2-2). EPA is not taking action on these revisions.

326 IAC 2-2-4(a)(1) and 2-2-4(a)(2) have been modified to change the phrase "pollutant subject to regulation under the CAA" to "regulated NSR pollutant." This rule language is consistent with the federal rule and EPA proposes approval of this revision.

#### 326 IAC 2-2-5 (Air Quality Impact, Requirements)

Indiana has modified the air quality impact requirements language in 326 IAC 2-2-5(b) to include clean unit designations for emission units that have not previously received a major NSR permit (see 326 IAC 2-2.2-2). EPA is not taking action on the modification to 326 IAC 2-2-5(b).

#### 326 IAC 2-2-6 (Increment Consumption; Requirements)

Indiana has made changes to 326 IAC 2-2-6 that are grammatical in nature and do not change the substance of the definition. EPA proposes to approve these changes.

#### 326 IAC 2-2-7 (Additional Analysis; Requirements)

Indiana has modified the additional impact analysis requirements language in 326 IAC 2-2-7 to include the result of Clean Unit designations. EPA is not taking action on the modification to 326 IAC 2-2-7.

#### 326 IAC 2-2-8 Source Obligation

Indiana has modified 326 IAC 2-2-8 to add provisions for sources electing to calculate projected actual emissions. EPA is not taking action the modified rule language in 326 IAC 2-2-8(b) which says "other than projects at a clean unit or."

326 IAC 2-2-8(b) specifies recordkeeping and reporting

requirements for sources that elect to use the actual-to-projected actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. The "reasonable possibility" clause of this provision of the federal rule has been remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling. *State of New York et al. v. EPA*, 413 F.3d 3 (D.C. Cir. 2005). At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. As IDEM's reasonable possibility clause is consistent with the existing federal rule and the remaining portions of 326 IAC 2-2-8 are consistent with 40 CFR 51.166(r)(6) and (7), we propose approval of 326 IAC 2-2-8.

IDEM provided a letter to EPA dated May 9, 2006, stating its intent to make any revisions to 326 IAC 2-2 necessary to incorporate and implement federal program revisions should it be necessary for EPA to take further action on the remand of 40 CFR 51.166(r)(6). In the letter, IDEM also commits to implementing the reasonable possibility provision consistent with EPA policy and guidance. EPA proposes to approve Indiana's rule with the "reasonable possibility" provision since Indiana will be implementing this rule provision in a manner consistent with EPA regulations, policy, and guidance.

#### 326 IAC 2-2-10 Source Information

Indiana has modified the source information provision in 326 IAC 2-2-10 to include sources requesting a Clean Unit designation. EPA is not taking action on the modifications to 326 IAC 2-2-10.

#### *Rule 2.2. Clean Unit Designations in Attainment Areas*

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this Clean Unit provision.

#### *Rule 2.3. Pollution Control Project (PCP) Exclusion Procedural Requirements in Attainment Areas*

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this PCP provision.

#### *Rule 2.4. Actuals Plantwide Applicability Limitations in Attainment Areas*

##### 326 IAC 2-2.4-1 Applicability

This section of the Indiana PSD rules regarding PAL applicability is consistent with 40 CFR 51.166(w)(1). This rule section refers sources in some source categories to the provisions in 326 IAC 2-2.6. A separate discussion of

326 IAC 2-2.6 is included in this document.

##### 326 IAC 2-2.4-2 Definitions

This section of the Indiana PSD rules regarding definitions for PALs is consistent with 40 CFR 51.166(w)(2).

##### 326 IAC 2-2.4-3 Permit Application Requirements

This section of the Indiana PSD rules regarding application requirements for PALs is consistent with 40 CFR 51.166(w)(3).

##### 326 IAC 2-2.4-4 Establishing PALs; General Requirements

This section of the Indiana PSD rules regarding establishing PALs is consistent with 40 CFR 51.166(w)(4).

##### 326 IAC 2-2.4-5 Public Participation Requirements for PALs

This section of the Indiana PSD rules regarding public participation for approval of PALs is generally consistent with 40 CFR 51.166(w)(5). However, the Indiana provision extends to PAL termination or revocation. Neither of these activities is addressed in the federal rule, but is provided for in the preamble to the federal rule (67 FR 80209). Therefore, this provision is acceptable. For further discussion on PAL termination or revocation, see the paragraph below addressing 326 IAC 2-2.4-15.

##### 326 IAC 2-2.4-6 Establishing a 10-Year Actuals PAL Level

This section of the Indiana PSD rules regarding establishing an actuals PAL level is consistent with 40 CFR 51.166(w)(6).

##### 326 IAC 2-2.4-7 Contents of the PAL Permit

This section of the Indiana PSD rules regarding the required contents of a PAL permit is consistent with 40 CFR 51.166(w)(7).

##### 326 IAC 2-2.4-8 PAL Effective Period and Reopening of the PAL Permit

This section of the Indiana PSD rules regarding the effective period of a PAL permit and reopening of a PAL permit is consistent with 40 CFR 51.166(w)(8).

##### 326 IAC 2-2.4-9 Expiration of a PAL

This section of the Indiana PSD rules regarding the expiration of a PAL permit and the subsequent requirement for a source with an expired PAL permit is consistent with 40 CFR 51.166(w)(9).

##### 326 IAC 2-2.4-10 Renewal of a PAL

This section of the Indiana PSD rules regarding the renewal of a PAL permit is consistent with 40 CFR 51.166(w)(10).

### 326 IAC 2-2.4-11 Increasing a PAL During the PAL Effective Period

This section of the Indiana PSD rules regarding increases to a PAL emission limitation is consistent with 40 CFR 51.166(w)(11).

### 326 IAC 2-2.4-12 Monitoring Requirements for PALs

This section of the Indiana PSD rules regarding monitoring requirements for PAL sources is consistent with 40 CFR 51.166(w)(12).

### 326 IAC 2-2.4-13 Recordkeeping Requirements

This section of the Indiana PSD rules regarding recordkeeping requirements for PAL sources is consistent with 40 CFR 51.166(w)(13).

### 326 IAC 2-2.4-14 Reporting and Notification Requirements

This section of the Indiana PSD rules regarding reporting and notification requirements for PAL sources is consistent with 40 CFR 51.166(w)(14).

### 326 IAC 2-2.4-15 Termination and Revocation of a PAL

This section of the Indiana PSD rules outlines the process for terminating or revoking a PAL permit. The federal rule in 40 CFR 51.166 does not include specific provisions for termination or revocation. The preamble to the December 31, 2002, federal NSR rulemaking (67 FR 80209) states: "today's final rules do not contain specific provisions related to the issue of terminating a PAL. Decisions about whether a PAL can or should be terminated will be handled between you and your reviewing authority in accordance with the requirements of the applicable permitting program." Indiana's requirements for termination and revocation are consistent with the requirements for expiration of a PAL in 326 IAC 2-2.4-9 and 40 CFR 51.166(w)(9).

### Rule 2.6. Federal NSR Requirements for Sources Subject to Pub.L. 231-2003, Section 6, Endangered Industries

IDEM's September 2, 2004 submittal included 326 IAC 2-2.6. However, this rule had a sunset provision and expired on July 1, 2005. Since this rule is no longer in effect, EPA is not including it in this proposed partial approval.

### Rule 3. Emission Offset (Nonattainment NSR)

#### 326 IAC 2-3-1 (Definitions)

##### Actual Emissions

Indiana has revised the definition of "actual emissions" in 326 IAC 2-3-1(b)

to add the term "regulated NSR pollutant" (see definition below), to revise the language to specify the time frame as a "consecutive twenty-four (24) month period," and to add language stating that this definition does not apply for calculating a significant emissions increase or for establishing a PAL. This revision to the definition of "actual emissions" is consistent with the definition in 40 CFR 51.165(a)(1)(xii).

##### Allowable Emissions

Indiana has revised the definition of "allowable emissions" in 326 IAC 2-3-1(c) to replace the term "federally enforceable" with "enforceable." Indiana's use of the term "enforceable" is consistent with the decision in *Chemical Manufacturers Association v. EPA, 70 F.3d 637* (D.C. Cir. 1995).

##### Baseline Actual Emissions

Indiana has established the definition of "baseline actual emissions" in 326 IAC 2-3-1(d). This is consistent with the definition of "baseline actual emissions" in 40 CFR 51.165(a)(1)(xxxv).

##### Best Available Control Technology

Indiana has modified the definition of "best available control technology" in 326 IAC 2-3-1(f). The language "maximum degree of reduction for each pollutant subject to regulation under the provisions of the CAA" has been replaced with "maximum degree of reduction for each regulated NSR pollutant." This is consistent with the definition in 40 CFR 51.165(a)(1)(XL).

##### Clean Unit

Indiana has established the definition of "Clean Unit" in 326 IAC 2-3-1(j). EPA is not taking action on this definition as it relates to the Clean Unit provision.

##### Continuous Emissions Monitoring System

Indiana has established the definition of "continuous emissions monitoring system" in 326 IAC 2-3-1(n). This is consistent with the definition of "continuous emissions monitoring system" in 40 CFR 51.165(a)(1)(xxxi).

##### Continuous Emissions Rate Monitoring System (CERMS)

Indiana has established the definition of "continuous emissions rate monitoring system" in 326 IAC 2-3-1(o). This is consistent with the definition of "continuous emissions rate monitoring system" in 40 CFR 51.165(a)(1)(xxxiv).

##### Continuous Parameter Monitoring System (CPMS)

Indiana has established the definition of "continuous parameter monitoring system" in 326 IAC 2-3-1(p). This is consistent with the definition of "continuous parameter monitoring system" in 40 CFR 51.165(a)(1)(xxxiii).

##### Emissions Unit

Indiana has modified the definition of "emissions unit" in 326 IAC 2-2-1(s). This is consistent with the definition of "emissions unit" in 40 CFR 51.165(a)(1)(vii). Included in both the federal and State definitions is the statement that a replacement unit is considered an existing unit under this definition. However, Indiana's rules do not define "replacement unit," which is included in the federal rule at 40 CFR 51.165(a)(1)(xxi). Indiana sent a letter to EPA on October 4, 2004, clarifying that the State will follow the federal definition of "replacement unit," and committing to add that definition to its nonattainment NSR rules in a future rulemaking.

##### Federal Land Manager

Indiana has established the definition of "Federal Land Manager" in 326 IAC 2-3-1(t). This is consistent with the definition of "federal land manager" in 40 CFR 51.165(a)(1)(xlii).

##### Federally Enforceable

Indiana has established the definition of "federally enforceable" in 326 IAC 2-3-1(u). This is consistent with the definition of "federally enforceable" in 40 CFR 51.165(a)(1)(xiv).

##### Lowest Achievable Emission Rate (LAER)

Indiana has established the definition of "lowest achievable emission rate" in 326 IAC 2-3-1(y). This is consistent with the definition of "lowest achievable emission rate" in 40 CFR 51.165(a)(1)(xiii).

##### Major Modification

Indiana has modified the definition of "major modification" in 326 IAC 2-3-1(z) to add provisions regarding PCPs and PALs. EPA is not taking action on 326 IAC 2-3-1(z)(2)(h) since it is a PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.165(a)(1)(v).

##### Net Emissions Increase

Indiana has modified the definition of "net emissions increase" in 326 IAC 2-3-1(dd) to be consistent with the definition in the federal rule. EPA is not taking action on 326 IAC 2-3-1(dd)(3)(B)(iii) since it is a clean unit

provision. EPA is also not taking action on 326 IAC 2-3-1(dd)(3)(B)(v)(EE) since it is a clean unit and PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.165(a)(1)(vi).

#### *Nonattainment Major New Source Review Program (NSR Program)*

Indiana has established the definition of “nonattainment major new source review program” in 326 IAC 2-3-1(ff). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxx).

#### *Pollution Control Project (PCP)*

Indiana has modified the definition of “pollution control project” in 326 IAC 2-3-1(gg). EPA is not taking action on this definition.

#### *Pollution Prevention*

Indiana has established the definition of “pollution prevention” in 326 IAC 2-3-1(hh). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxvi).

#### *Potential To Emit*

Indiana has modified the definition of “potential to emit” in 326 IAC 2-3-1(ii) to change the term “source” to “stationary source,” which is consistent with the definition in 40 CFR 51.165(a)(1)(iii). Indiana has also changed the term “enforceable” to “enforceable as a practical matter.” Indiana’s use of the term “enforceable” is consistent with *Chemical Manufacturers Association v. EPA*, 70 F.3d 637 (D.C. Cir. 1995).

#### *Predictive Emissions Monitoring System (PEMS)*

Indiana has established the definition of “predictive emissions monitoring system” in 326 IAC 2-3-1(jj). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxii).

#### *Prevention of Significant Deterioration Permit*

Indiana has established the definition of “prevention of significant deterioration permit” in 326 IAC 2-3-1(kk). This is consistent with the definition in 40 CFR 51.165(a)(1)(xli).

#### *Project*

Indiana has established the definition of “project” in 326 IAC 2-3-1(ll). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxix).

#### *Projected Actual Emissions*

Indiana has established the definition of “projected actual emissions” in 326 IAC 2-3-1(mm). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxviii).

#### *Regulated NSR Pollutant*

Indiana has established the definition of “regulated NSR pollutant” in 326 IAC 2-3-1(oo). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxvii).

#### *Significant Emissions Increase*

Indiana has established the definition of “significant emissions increase” in 326 IAC 2-3-1(rr). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxvii).

#### *Stationary Source*

Indiana has modified the definition of “stationary source” in 326 IAC 2-3-1(tt) to change the phrase “pollutant subject to regulation under the CAA” to “regulated NSR pollutant.” This change is consistent with the definition in 40 CFR 51.165(a)(1)(i).

#### *Minor Revisions to Definitions*

Indiana has made changes to the definitions of “begin actual construction,” “building, structure, facility, or installation,” “construction,” “fugitive emissions,” “major stationary source,” “new,” and “reasonable further progress,” that are grammatical in nature and do not change the substance of the definitions. These changes are acceptable.

#### *326 IAC 2-3-2 (Applicability)*

Indiana has added regulatory language in 326 IAC 2-3-2(c), (k), and (l) to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.165(a)(2) for significant emissions increases, PALs, and PCPs, respectively. Indiana has also made other changes to 326 IAC 2-3-2 that are grammatical in nature and do not change the substance of the regulatory provision. EPA is not taking action on 326 IAC 2-3-2(c)(5) since it is a Clean Unit provision. EPA is also not taking action on 326 IAC 2-3-2(l) since it is a PCP provision.

Indiana has added 326 IAC 2-3-2(m) to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.165(a)(6) and (7) for sources calculating projected actual emissions. As requested by IDEM in its October 25, 2005, letter, we are not taking action on the rule language in 326 IAC 2-3-2(m) that says “other than projects at a clean unit or.”

326 IAC 2-3-2(m) specifies recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. This provision of the federal

rule has been remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling. At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. As IDEM’s reasonable possibility clause is consistent with the existing federal rule and the remaining portions of 326 IAC 2-3-2 are consistent with the federal rule, we propose approval of 326 IAC 2-3-2.

IDEM provided a letter to EPA dated XXXX, 2006 stating its intent to make any revisions to 326 IAC 2-3 necessary to incorporate and implement federal program revisions should it be necessary for EPA to take further action on the remand of 40 CFR 51.165(a)(6). In the letter, IDEM also commits to implementing the reasonable possibility provision consistent with EPA policy and guidance. EPA proposes to approve Indiana’s rule with the “reasonable possibility” provision since Indiana will be implementing this rule provision in a manner consistent with EPA regulations, policy, and guidance.

#### *326 IAC 2-3-3 (Applicable Requirements)*

Indiana has added the following: (1) Regulatory language in 326 IAC 2-3-3(a)(6) regarding calculating offsets that is consistent with 40 CFR 51.165(a)(3)(ii)(J); (2) regulatory language in 326 IAC 2-3-3(a)(8) regarding compliance responsibility that is consistent with 40 CFR 51.165(a)(5); (3) regulatory language in 326 IAC 2-3-3(b)(5) regarding offset credits that is consistent with 40 CFR 51.165(a)(3)(ii)(C); (4) regulatory language in 326 IAC 2-3-3(b)(12) regarding offsets from clean units or PCPs that is consistent with 40 CFR 51.165(a)(3)(ii)(H); (5) regulatory language in 326 IAC 2-3-3(b)(13) regarding offsets from clean units or PCPs that is consistent with 40 CFR 51.165(a)(3)(ii)(I); and (6) regulatory language in 326 IAC 2-3-3(b)(14) regarding emission reduction credit that is consistent with 40 CFR 51.165(a)(3)(ii)(G). Indiana has also made other changes to 326 IAC 2-3-3 that are grammatical in nature and do not change the substance of the regulatory provision.

EPA is not taking action on the modifications to 326 IAC 2-3-3(b)(12) and 326 IAC 2-3-3(b)(13) as they relate to Clean Units and PCPs. EPA proposes approval of the remaining portions of 326 IAC 2-3-3.

**Rule 3.2. Clean Unit Designations in Nonattainment Areas**

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this clean unit provision.

**Rule 3.3. Pollution Control Project Exclusion Procedural Requirements in Nonattainment Areas**

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this PCP provision.

**Rule 3.4. Actuals Plantwide Applicability Limitations in Nonattainment Areas****326 IAC 2-3.4-1 Applicability**

This section of the Indiana rules regarding PAL applicability is consistent with 40 CFR 51.165(f)(1).

This rule section refers sources in some source categories to the provisions in 326 IAC 2-2.6. A separate discussion of 326 IAC 2-2.6 is included in this document.

**326 IAC 2-3.4-2 Definitions**

This section of the Indiana rules regarding definitions for PALs is consistent with 40 CFR 51.165(f)(2).

**326 IAC 2-3.4-3 Permit Application Requirements**

This section of the Indiana rules regarding application requirements for PALs is consistent with 40 CFR 51.165(f)(3).

**326 IAC 2-3.4-4 Establishing PALs; General Requirements**

This section of the Indiana rules regarding establishing PALs is consistent with 40 CFR 51.165(f)(4).

**326 IAC 2-3.4-5 Public Participation Requirements for PALs**

This section of the Indiana rules regarding public participation for approval of PALs is generally consistent with 40 CFR 51.165(f)(5). However, the Indiana provision extends to PAL termination or revocation. Neither of these activities is addressed in the federal rule, but is provided for in the preamble to the federal rule (67 FR 80209). Therefore, this provision is acceptable. For further discussion on PAL termination or revocation, see the paragraph below addressing 326 IAC 2-3.4-15.

**326 IAC 2-3.4-6 Establishing a 10-Year Actuals PAL Level**

This section of the Indiana rules regarding establishing an actuals PAL level is consistent with 40 CFR 51.165(f)(6).

**326 IAC 2-3.4-7 Contents of the PAL Permit**

This section of the Indiana rules regarding the required contents of a PAL permit is consistent with 40 CFR 51.165(f)(7).

**326 IAC 2-3.4-8 PAL Effective Period and Reopening of the PAL Permit**

This section of the Indiana rules regarding the effective period of a PAL permit and reopening of a PAL permit is consistent with 40 CFR 51.165(f)(8).

**326 IAC 2-3.4-9 Expiration of a PAL**

This section of the Indiana rules regarding the expiration of a PAL permit and the subsequent requirement for a source with an expired PAL permit is consistent with 40 CFR 51.165(f)(9).

**326 IAC 2-3.4-10 Renewal of a PAL**

This section of the Indiana rules regarding the renewal of a PAL permit is consistent with 40 CFR 51.165(f)(10).

**326 IAC 2-3.4-11 Increasing a PAL During the PAL Effective Period**

This section of the Indiana rules regarding increasing a PAL emission limitation is consistent with 40 CFR 51.165(f)(11).

**326 IAC 2-3.4-12 Monitoring Requirements for PALs**

This section of the Indiana rules regarding monitoring requirements for PAL sources is consistent with 40 CFR 51.165(f)(12).

**326 IAC 2-3.4-13 Recordkeeping Requirements**

This section of the Indiana rules regarding recordkeeping requirements for PAL sources is consistent with 40 CFR 51.165(f)(13).

**326 IAC 2-3.4-14 Reporting and Notification Requirements**

This section of the Indiana rules regarding reporting and notification requirements for PAL sources is consistent with 40 CFR 51.165(f)(14).

**326 IAC 2-3.4-15 Termination and Revocation of a PAL**

This section of the Indiana nonattainment NSR rules outlines the process for terminating or revoking a PAL permit. The federal rule in 40 CFR 51.165 does not include specific provisions for termination or revocation. The preamble to the December 31, 2002, federal NSR rulemaking (67 FR 80209) states "today's final rules do not contain specific provisions related to the issue of terminating a PAL. Decisions about whether a PAL can or should be terminated will be handled between you

and your reviewing authority in accordance with the requirements of the applicable permitting program." Indiana's requirements for termination and revocation are consistent with the requirements for expiration of a PAL in 326 IAC 2-3.4-9 and 40 CFR 51.165(f)(9).

**Rule 5.1. Construction of New Sources****326 IAC 2-5.1-4 Transition Procedures**

This revision is not related to the New Source Review Reform regulations and is not being evaluated in comparison to the December 31, 2002, EPA rulemaking. This section of Indiana's permit rules provides a transition for construction permit sources to also obtain the proper operating permit. The previous version of this section allowed a source triggering PSD or nonattainment NSR that is also newly subject to Title V to obtain a state minor source operating permit in the interim, provided that the source submitted a Title V permit application within 12 months of the date of approval to operate. Under the revised rule, newly-subject Title V sources do not have this option and must obtain a Title V permit as specified in the Title V regulations at the time of the PSD or nonattainment NSR permit issuance. This provision is more stringent than the federal rule in that it does not provide newly subject sources the option of submitting a Title V application up to 12 months after construction permit approval. EPA proposes approval of this rule revision.

**Rule 7. Part 70 Permit Program****326 IAC 2-7-11 Administrative Permit Amendments**

Indiana has included in this submittal revisions to the administrative amendment provisions in 326 IAC 2-7-11(a). This regulation is a part of Indiana's Title V program and is not a part of the SIP. Therefore, EPA will not take action on this rule revision in today's proposal.

**326 IAC 2-7-12 Permit Modification**

Indiana has included in this submittal revisions to the minor permit modification provisions in 326 IAC 2-7-12. This regulation is a part of Indiana's Title V program and is not a part of the SIP. Therefore, EPA will not take action on this rule revision in today's proposal.

**IV. What Action Is EPA Taking Today?**

EPA is proposing to partially approve into the Indiana SIP the revisions to Indiana's PSD and NSR construction permits program submitted by IDEM on

September 2, 2004. These revisions meet the minimum program requirements of the December 31, 2002, EPA NSR Reform rulemaking. As requested by IDEM's October 25, 2005 letter, EPA is not taking action on the clean unit and PCP provisions of Indiana's rule.

## V. Statutory and Executive Order Reviews

### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### *Unfunded Mandates Reform Act*

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 15, 2006.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E6-10679 Filed 7-7-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[EPA-R07-OAR-2006-0476; FRL-8192-6]

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revisions submitted by the state of Nebraska. This action revises monitoring requirements which were found to be less stringent than the applicable Federal rule; adds permits-by-rule provisions, which would provide a streamlined approach for issuing construction/operating permits for hot mix asphalt plants and small animal incinerators' and deletes the chemical compound ethylene glycol monobutyl ether from the list of regulated hazardous air pollutants in Appendices II and III. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

**DATES:** Comments on this proposed action must be received in writing by August 9, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0476 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov).
3. Mail: Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas