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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**  
LSA Document #06-437

**DEVELOPMENT OF NEW RULES CONCERNING OTHER SOLID WASTE INCINERATION (OSWI) UNITS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule to establish emission limits for other solid waste incineration (OSWI) units which commenced construction on or before December 9, 2004. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 11-9-1](#); [326 IAC 11-9-2](#); [326 IAC 11-9-3](#); [326 IAC 11-9-4](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#)... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

**BACKGROUND**

This rule incorporates federal air emission requirements for other solid waste incineration (OSWI) units. OSWI units are very small municipal waste combustion units and institutional waste incineration units. On December 16, 2005, U.S. EPA published a final rule establishing new source performance standards (NSPS) for new sources and emission guidelines for existing sources (70 FR 74870). New units are those that commenced construction after December 9, 2004, or commenced reconstruction/modification on or after June 16, 2006. Existing sources are those that commenced construction before December 9, 2004. Section 129 of the Clean Air Act (CAA) requires U.S. EPA to use maximum achievable control technology (MACT) in developing these standards.

Federal law requires states to adopt requirements at least as stringent as the federal emission guidelines for OSWI units. IDEM has initiated this rulemaking to establish emission standards consistent with those of U.S. EPA's final rule for existing units. This rule will provide the legal mechanism to implement the emission guidelines and will be part of the state plan that IDEM will submit to U.S. EPA for approval, as required by Sections 111(d) and 129 of the CAA. The federal emission guidelines for existing sources are not directly enforceable and must be implemented by the state through a state plan, i.e., state rule or other enforceable mechanism. NSPSs are incorporated by reference in Article 12 and the OSWI NSPS will be incorporated into state rule in a separate rulemaking through the annual update to the Code of Federal Regulation (CFR) definition for July 1, 2006.

The federal rule applies to very small municipal waste combustion units that have the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel and institutional waste incineration units of any size. The definition of municipal solid waste in the rule includes wastes "collected from" multiple establishments. Under this definition, incinerators owned/operated by commercial businesses, such as grocery stores, that burn waste generated on site rather than collected from multiple establishments are not considered very small municipal waste combustion units. Institutional waste incinerators include units owned/operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, prison, military establishment, church, or other similar facility. Air curtain destructors/incinerators that burn municipal solid waste or institutional waste are also regulated by this rule. However, as long as the air curtain destructor/incinerator is

burning 100% wood waste, clean lumber, and/or yard waste, the unit needs to only comply with an initial and subsequent annual opacity test.

The following types of incineration units are excluded from this rule:

- Co-fired combustors (i.e., less than 30% of the total fuel input by weight is municipal solid waste)
- Incinerators and air curtain incinerators in isolated areas of Alaska
- Rural institutional waste units
- Pathological waste units
- Temporary-use incinerators and air curtain incinerators used in disaster recovery
- Units that combust contraband or prohibited goods
- Incinerators used for national security

Sources regulated by other federal MACT or Section 111(d)/129 regulations are not subject to this rule. The exclusions for co-fired combustors, cogeneration facilities, rural institutional waste incinerators, pathological waste incinerators, small power production facilities, temporary-use units used in disaster recovery, and national security incinerators is conditioned upon the source meeting notification and recordkeeping requirements.

The federal rule establishes emission limits for cadmium (Cd), carbon monoxide (CO), dioxins and dibenzofurans (dioxins/furans), hydrogen chloride (HCl), lead (Pb), mercury (Hg), opacity, oxides of nitrogen (NO<sub>x</sub>), particulate matter (PM), and sulfur dioxide (SO<sub>2</sub>). The rule also establishes requirements for operator training and qualifications, waste management plans, and testing and monitoring requirements. The waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. Initial and annual stack tests are required for all pollutants with emission limits and continuous emissions monitoring is required for carbon monoxide. Sources are also required to continuously monitor operating parameters to ensure continuous compliance with the emission limits. Units not operating pursuant to a Title V permit will be required to submit an application for a Title V permit within one (1) year from the effective date of this rule, or December 16, 2008, whichever is earlier.

IDEM is currently developing an inventory of affected sources. At this time IDEM estimates that there are very few sources subject to this rule. Many sources that would have been subject to this rule have shut down over time. There may be some incineration units located at schools, hospitals, prisons, military establishments, or facilities covered by the institutional waste incineration units definition operating in Indiana. There are some sources that will be required to notify IDEM that they are excluded from this rule and some will need to keep records to prove they are exempt.

In lieu of compliance with the rule, sources may choose to shut down and use other waste disposal options, such as sending waste off-site to a commercial incinerator. Incinerators that continue to operate will need to install add-on air pollution control devices to meet the emission limits and comply with extensive monitoring requirements. Although the rule does not require the use of a specific type of control device, the MACT emission limits were determined based on the performance of wet scrubbing systems on OSWI units.

Sources subject to this rule are required to comply by either three years after the effective date of the state rule or December 16, 2010, whichever is earlier. If an owner or operator plans to permanently close the OSWI unit, it must be done so by these same dates. The source has 180 days after final compliance to conduct the initial performance test. Sources are required to meet the emission limits on the date the initial performance test is required or completed, whichever date is earlier.

The draft rule language incorporates by reference the federal model rule language from 40 CFR 60, Subpart FFFF excluding the sections that have to do with the state implementing a state plan. IDEM is seeking comment on the compliance date included in the draft language. The CAA requires that affected sources achieve compliance as expeditiously as practicable after U.S. EPA approval of the state rule, but not later than the earlier of the following dates: three years after the effective date of the state rule or December 16, 2010.

#### **[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

#### **Potential Fiscal Impact**

There are no costs imposed by this rule beyond those already imposed by federal law. U.S. EPA does not expect any cost due to this rule. Any incinerator subject to the emission limits in this rule will most likely shut down the incinerator as means of compliance with the rule and contract to have the waste hauled off-site for disposal. Finding an alternative way to dispose of the waste will be more cost effective for affected sources than upgrading the unit to comply with the emission limits in the rule, ongoing emission testing and operator training requirements, and obtaining a Title V operating permit.

#### **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 Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6021 (in Indiana).

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at <http://www.in.gov/idem/compliance/ctap/index.html>.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 N. Senate Avenue, W-041  
Indianapolis, IN 46204-2251  
(317) 232-8578  
[selyusuf@idem.in.gov](mailto:selyusuf@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen  
IDEM Small Business Assistance Program Ombudsman  
External Affairs - MC50-01  
100 N. Senate Avenue, IGCN 1301  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[elevenha@idem.in.gov](mailto:elevenha@idem.in.gov)

## FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on other solid waste incineration (OSWI) units. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) The federal rule requires that the department develop rules to incorporate the emission guidelines contained in 40 CFR 60, Subpart FFFF. IDEM has some discretion on how to implement the emission guidelines, i.e., compliance date. IDEM believes this notice and subsequent hearings provide sufficient opportunity for public input on this rulemaking.
- (2) The rulemaking is an incorporation of federal guidelines that have already gone through a rigorous public comment process.
- (3) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (4) The draft rule is hereby incorporated into these findings.

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Thomas W. Easterly  
Commissioner  
Indiana Department of Environmental Management

## 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 rule. Mailed comments should be addressed to:

#06-437(APCB)OSWI  
Susan Bem 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 East 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 Section at (317) 233-0426.

## COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 13, 2006.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. [326 IAC 11-9](#) IS ADDED TO READ AS FOLLOWS:

### Rule 9. Other Solid Waste Incineration Units

#### [326 IAC 11-9-1](#) Applicability

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) This rule applies to an incineration unit that is an:

- (1) existing incineration unit as defined in 40 CFR 60.2992\*; and
- (2) other solid waste incineration (OSWI) unit as defined in 40 CFR 60.3078\* or air curtain incinerator described in 40 CFR 60.2994(b)\*.

OSWI units are very small municipal waste combustion units and institutional waste incineration units as defined in 40 CFR 60.3078\*.

(b) This rule does not apply to incineration units excluded under 40 CFR 60.2993\*.

(c) Notifications, applications, and requests for excluded sources under 40 CFR 60.2993\* shall be submitted to both the department and U.S. EPA.

\*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Washington, D.C. 20401 or are available for 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 11-9-1](#))

#### [326 IAC 11-9-2](#) Definitions

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 2. For purposes of this rule, these terms used in 40 CFR 60.3000 through 40 CFR 60.3078\* are defined as follows:

- (1) "Administrator" means the commissioner of the department of environmental management.
- (2) "You" means the owner or operator of an OSWI unit or air curtain incinerator subject to 40 CFR 60, Subpart FFFF\*.

\*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Washington, D.C. 20401 or are available for 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 11-9-2](#))

#### [326 IAC 11-9-3](#) Requirements; incorporation by reference of federal standards

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

**Sec. 3. The air pollution control board incorporates by reference the following sections of 40 CFR 60, Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004:**

- (1) 40 CFR 60.3000 through 40 CFR 60.3002 Compliance Schedule\*.
- (2) 40 CFR 60.3010 through 40 CFR 60.3012 Waste Management Plan\*.
- (3) 40 CFR 60.3014 through 40 CFR 60.3020 Operator Training and Qualification\*.
- (4) 40 CFR 60.3022 through 40 CFR 60.3025 Emission Limitations and Operating Limits\*.
- (5) 40 CFR 60.3027 and 40 CFR 60.3028 Performance Testing\*.
- (6) 40 CFR 60.3030 and 40 CFR 60.3031 Initial Compliance Requirements\*.
- (7) 40 CFR 60.3033 through 40 CFR 60.3036 Continuous Compliance Requirements\*.
- (8) 40 CFR 60.3038 through 40 CFR 60.3044 Monitoring\*.
- (9) 40 CFR 60.3046 through 40 CFR 60.3057 Record Keeping and Reporting\*.
- (10) 40 CFR 60.3059 and 40 CFR 60.3060 Title V Operating Permits\*.
- (11) 40 CFR 60.3061 Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery\*.
- (12) 40 CFR 60.3062 through 40 CFR 60.3069 Air Curtain Incinerators that Burn Only Wood Waste, Clean Lumber, and Yard Waste\*.
- (13) 40 CFR 60.3076 Equations\*.
- (14) 40 CFR 60.3078 Definitions\*.
- (15) 40 CFR 60, Subpart FFFF, Tables 1 through 5\*.

\*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Washington, D.C. 20401 or are available for 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 11-9-3](#))

#### **[326 IAC 11-9-4](#) Compliance deadlines**

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

**Sec. 4. The final compliance date for 40 CFR 60, Subpart FFFF, Table 1\* is the earlier of the following dates:**

- (1) Three (3) years from the effective date of this rule.
- (2) December 16, 2010.

\*This document is incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Washington, D.C. 20401 or are available for 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 11-9-4](#))

#### **[Notice of Public Hearing](#)**

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