

**Document:** Proposed Rule, **Register Page Number:** 25 IR 1984

**Source:** March 1, 2002, Indiana Register, Volume 25, Number 6

**Disclaimer:** This document was created from the files used to produce the official (printed) Indiana Register. However, this document is unofficial.

## TITLE 326 AIR POLLUTION CONTROL BOARD

### Proposed Rule

LSA Document #01-375

### DIGEST

Adds 326 IAC 11-8 concerning emission control limits for commercial and industrial solid waste incineration units. This rule incorporates federal air emission requirements for solid waste incineration units that burn commercial and industrial waste. Effective 30 days after filing with the secretary of state.

### HISTORY

IC 13-14-9-7 Notice of Comment Period and Notice of First Hearing: November 1, 2001, Indiana Register (25 IR 560).

Date of First Hearing: February 6, 2002.

### PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantively different from the draft rule published on November 1, 2001 at 25 IR 560, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from November 1, 2001, through December 3, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Eli Lilly and Company, (EL)

GE Plastics Mt. Vernon, Inc., (GE)

Homecrest Cabinetry, (HC)

Hoven Funeral Home, (HV)

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

#### Closure date

*Comment:* The District of Columbia Circuit Court vacated the early cessation provision of the Hazardous Waste Combustor maximum achievable control technology regulation. IDEM should not limit the closure date to one year after the effective date of the state rule. The early cessation requirement appears to be arbitrary and capricious. (EL)

*Response:* The emission guidelines require the state rule to achieve final compliance as expeditiously as practicable after U.S. EPA approval of the state rule. Some commercial and industrial solid waste incinerators (CISWI) will be able to send their waste off-site to a landfill and thus do not need the extended time to close. Air curtain incinerators also will not need extended time to come into compliance, since their main requirement is an annual opacity test. Therefore, IDEM does not consider an early closure date to be arbitrary, since there is an environmental benefit. However, IDEM is aware that for some sources, one (1) year after the effective date of the state rule may not allow enough time for closing the unit. We have modified the state rule to allow for extended closure dates when the source can show that it is necessary.

*Comment:* Since the rule was presented as the adoption of a federal requirement without change, and IDEM changed the compliance date from the model, the Commissioner should not have dispensed with the first public comment period and the rule should be subject to additional comments. (EL)

*Response:* IDEM considers this rulemaking to have limited policy options. This comment period and subsequent comment periods provide sufficient opportunity for the public to comment on the one area that IDEM has changed, the compliance date. The findings prepared under IC 13-14-9-7 mention IDEM's discretion with respect to the compliance date.

*Comment:* CISWI units should not be compared to medical waste incinerators for the allowed closure date because CISWI units do not have the same alternative options. (EL)

*Response:* IDEM agrees, CISWI units will not have the same alternative on-site waste disposal options as medical waste incinerators. However, some CISWI units will have the option of sending waste to a landfill whereas medical waste incinerators cannot send their waste to a landfill.

#### General

*Comment:* For companies that own and operate multiple sites in Indiana, IDEM should explicitly state in the rule that a final control

plan may encompass a strategy that deals with multiple plant sites collectively. (EL)

*Response:* IDEM did add this language to the rule, since IDEM has modified the state rule to include an extended compliance date for sources closing the incinerator. The extended compliance date for closure will allow for a strategy that deals with multiple plant sites collectively.

*Comment:* We support incorporating the federal rule without additional requirements, as IDEM has proposed. (GE)

*Response:* IDEM appreciates the commenter's support.

*Comment:* IDEM should use the term "incineration unit" instead of "incinerator" to maintain consistency with the federal rule. A reference to the federal rule for definition of CISWI unit should be added to applicability section. A reference to subpart Cb should be added to 326 IAC 11-8-1(b). Units listed in 326 IAC 11-8-1(b)(9) and 326 IAC 11-8-1(b)(10) should include a reference to the definition in 40 CFR 60.2875, 65 FR 75338. We suggest that all fourteen (14) types of incineration units that are exempt from this rule use the same paragraph structure. The reference to the Federal Power Act should be changed to match the federal rule. In paragraph (b)(11), the reference to "40 CFR 60" should be changed to "40 CFR 63". In sections 11-8-2(a)(13) and 11-8-2(c), insert "subpart" before "DDDD". (GE)

*Response:* IDEM agrees and the draft rule for preliminary adoption reflects the commenter's suggestions.

*Comment:* The phrase "(i.e., black liquor)" should be added to match the federal rule language. (GE)

*Response:* Indiana rules must be written in a style approved by the Indiana Legislative Service Agency. This means that language in Indiana rules will not always match federal style.

*Comment:* The phrase "both of" should be inserted in paragraphs (b)(1), (b)(2), and (b)(3)(B) to clarify that both actions must be taken to meet the exemption requirement. (GE)

*Response:* Style as approved by the Indiana Legislative Service Agency requires the phrase "all of". IDEM has inserted "all of" in paragraphs (b)(1), (b)(2) and (b)(3)(B). This clarifies, as suggested by the commenter, that both actions must be taken to meet the exemption requirement.

*Comment:* We feel that there should be a *de minimis* level for incinerators based on size and/or amount burned. For small incinerators, it would be cost prohibitive compared to the environmental benefit to put a scrubber on the stack. (HC)

*Response:* IDEM is required to adopt a state rule that is as stringent as the federal emission guidelines. The federal emission guidelines does not include a *de minimis* level for applicability. There are other options such as closing the incinerator and sending waste to a landfill, that are less costly.

*Comment:* Does this rule apply to crematories? (HV)

*Response:* Yes, it applies to commercial crematories, but the requirements are minimal notification and record keeping to document that the source is exempt from the emission limits.

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

On February 6, 2002, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rule 326 IAC 11-8 concerning emission control limits for commercial and industrial solid waste incineration units. Comments were made by the following parties:

Eli Lilly and Company (EL)

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

*Comment:* We question the need for a waste management plan for an incinerator that is shutting down, especially one that does not receive the full allotted time for an extension.

*Response:* IDEM will evaluate this requirement, and will discuss it further with U.S. EPA and interested parties.

## 326 IAC 11-8

SECTION 1. 326 IAC 11-8 IS ADDED TO READ AS FOLLOWS:

### Rule 8. Commercial and Industrial Solid Waste Incineration Units

#### 326 IAC 11-8-1 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) Except as provided in subsections (b), (e), (f), and (g), this rule applies to each commercial and industrial solid waste incineration (CISWI) unit as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000)\*, for which construction was commenced on or before November 30, 1999.**

**(b) The following are exempt from this rule:**

**(1) Incineration units burning ninety percent (90%) or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes as defined in 40 CFR 60.2875, 65 FR 75338**

- (December 1, 2000)\*, provided the owner or operator of the incinerator does all of the following:
- (A) Notifies the department and U.S. EPA that the unit meets these criteria.
  - (B) Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes burned, and the weight of all other fuels and wastes burned in the unit.
- (2) Incineration units burning ninety percent (90%) or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000)\*, provided the owner or operator of the incinerator does all of the following:
- (A) Notifies the department and U.S. EPA that the unit meets these criteria.
  - (B) Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.
- (3) Incineration units that meet either of the following criteria:
- (A) Qualify as a municipal waste combustor regulated under 40 CFR 60, Subpart Cb\*, Ea\*, Eb\*, AAAA (65 FR 76350 (December 6, 2000))\* or BBBB (65 FR 76378 (December 6, 2000))\*.
  - (B) Burn greater than thirty percent (30%) municipal solid waste or refuse-derived fuel, as defined in 40 CFR 60 Subpart Ea\*, Eb\*, AAAA (65 FR 76350 (December 6, 2000))\* and BBBB (65 FR 76378 (December 6, 2000))\* and that have the capacity to burn less than thirty-five (35) tons (thirty-two (32) megagrams) per day of municipal solid waste or refuse-derived fuel, provided the owner or operator of the incinerator does all of the following:
    - (i) Notifies the department and U.S. EPA that the unit meets these criteria.
    - (ii) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.
- (4) Medical waste incineration units regulated under 40 CFR 60, Subpart Ca\* or Ec\*.
- (5) Small power production units that meet all of the following requirements:
- (A) The unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C))\*.
  - (B) The unit burns homogeneous waste, not including refuse-derived fuel, to produce electricity.
  - (C) The owner or operator notifies the department and U.S. EPA that the unit meets all of these requirements.
- (6) Cogeneration units that meet all of the following requirements:
- (A) The unit qualifies as a cogeneration facility under Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B))\*.
  - (B) The unit burns homogeneous waste, not including refuse-derived fuel, to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.
  - (C) The owner or operator notifies the department and U.S. EPA that the unit meets all of these requirements.
- (7) Hazardous waste combustion units that meet either of the following criteria:
- (A) Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act\*.
  - (B) Units regulated under 40 CFR 63, Subpart EEE\*.
- (8) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.
- (9) Cyclonic barrel burners as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000)\*.
- (10) Rack, part, and drum reclamation units as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000)\*.
- (11) Cement kilns regulated under 40 CFR 63, Subpart LLL\*.
- (12) Sewage sludge incinerators regulated under 40 CFR 60, Subpart O\*.
- (13) Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The following types of units are considered chemical recovery units:
- (A) Units burning only pulping liquors that are reclaimed in a pulping liquor recovery process and reused in the pulping process.
  - (B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.
  - (C) Units burning only wood or coal feedstock for the production of charcoal.
  - (D) Units burning only manufacturing byproduct streams or residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for the use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(14) Laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis.

(c) The owner or operator of a unit listed in subsection (b) must submit an exemption notification no later than one (1) year from the effective date of this rule.

(d) Pathological waste exemptions submitted under 326 IAC 11-6 satisfy the conditions of subsection (b)(1).

(e) Air curtain incinerators or destructors that only burn one (1) of the following fuels are required to comply with 40 CFR 60.2810 through 40 CFR 60.2870, 65 FR 75338 (December 1, 2000)\* and obtain approval under 326 IAC 4-1-6:

(1) One hundred percent (100%) wood waste.

(2) One hundred percent (100%) clean lumber.

(3) One hundred percent (100%) yard waste.

(4) One hundred percent (100%) mixture of only wood waste, clean lumber, yard waste, or any combination of these wastes.

(f) If the owner or operator of a CISWI unit makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to 40 CFR 60, Subpart CCCC, 65 FR 75338 (December 1, 2000)\* and 326 IAC 12, and this rule no longer applies to that unit.

(g) Physical or operational changes made to an existing CISWI unit primarily to comply with emission limits under this rule are not considered modifications or reconstructions and do not result in an existing CISWI unit becoming subject to 40 CFR 60, Subpart CCCC, 65 FR 75338 (December 1, 2000)\*.

\*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 review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 11-8-1*)

### **326 IAC 11-8-2 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. 2. (a) The air pollution control board incorporates by reference the following provisions of 40 CFR 60, Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999, 65 FR 75338 (December 1, 2000):

(1) 40 CFR 60.2575 through 40 CFR 60.2615 Increments of Progress\*.

(2) 40 CFR 60.2620 through 40 CFR 60.2630 Waste Management Plan\*.

(3) 40 CFR 60.2635 through 40 CFR 60.2665 Operator Training and Qualification\*.

(4) 40 CFR 60.2670 through 40 CFR 60.2685 Emission Limitations and Operating Limits\*.

(5) 40 CFR 60.2690 through 40 CFR 60.2695 Performance Testing\*.

(6) 40 CFR 60.2700 through 40 CFR 60.2705 Initial Compliance Requirements\*.

(7) 40 CFR 60.2710 through 40 CFR 60.2725 Continuous Compliance Requirements\*.

(8) 40 CFR 60.2730 through 40 CFR 60.2735 Monitoring\*.

(9) 40 CFR 60.2740 through 40 CFR 60.2800 Record Keeping and Reporting\*.

(10) 40 CFR 60.2805 Title V Operating Permits\*.

(11) 40 CFR 60.2810 through 40 CFR 60.2870 Air Curtain Incinerators\*.

(12) 40 CFR 60.2875 Definitions\*.

(13) 40 CFR 60 Subpart DDDD Table 1 through 5\*.

(b) For the purposes of this rule, these terms used in 40 CFR 60.2575 through 40 CFR 60.2875, 65 FR 75338 (December 1, 2000)\* are defined as follows:

- (1) "Administrator" means the commissioner of the department of environmental management.
- (2) "You" means the owner or operator of a CISWI unit.

(c) An owner or operator subject to the control requirements in subsection (a) must comply no later one (1) year from the effective date of this rule unless the owner or operator:

- (1) submits a final control plan no later than one (1) year from the effective date of this rule; or
- (2) requests and is granted an extension of the closure date pursuant to subsection (e).

(d) If the owner or operator submits a final control plan, the compliance dates for the increments of progress in 40 CFR 60, Subpart DDDD Table 1, 65 FR 75338 (December 1, 2000)\* are as follows:

- (1) The compliance date for Increment 1–Submit Final Control Plan shall be one (1) year from the effective date of this rule.
- (2) The compliance date for Increment 2– Final Compliance shall be September 1, 2005.

(e) An owner or operator may request an extension of the closure date to achieve compliance as expeditiously as possible, but no later than September 1, 2005, by submitting a closure notification pursuant to 40 CFR 60.2615 and 40 CFR 60.2855, 65 FR 75338 (December 1, 2000)\*, which shall include all of the following supporting documentation:

- (1) Analysis that supports the need for the requested extension.
- (2) Explanation of why the compliance date of one (1) year after the effective date does not provide sufficient time to shut down.
- (3) Explanation of why the requested closure date provides sufficient time to shut down.

The documentation shall be submitted to the department within eight (8) months from the effective date of this rule and the department shall grant or deny the extension in a written response to the owner or operator within three (3) months of receipt of a closure notification that contains all required information.

\*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 review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 11-8-2*)

### ***Notice of Public Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on May 1, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed new rule 326 IAC 11-8.*

*The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Technical information regarding this action may be obtained from Susan Bem, Program Planning and Policy Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 extension 3-5697 (in Indiana). Additional general information regarding this action may be obtained from Gayla Killough, Rules Development and Outreach Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, extension 3-8628 (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*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317) 233-0855. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency 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 Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Janet G. McCabe  
Assistant Commissioner  
Office of Air Quality