

Sierra Club Great Lakes Program
Toxic Air Pollution Education Series

A Narrative Report on Indiana's Air Pollution Rules
Affecting Toxic Air Pollutants

Copyright, Sierra Club, March, 2000

Published by the
Sierra Club Great Lakes Program
Emily S. Green, Program Director
214 N. Henry Street, Suite 203; Madison, WI 53703
608-257-4994; 608-257-3513 (fax)
emily.green@sierraclub.org <http://www.sierraclub.org>

Prepared by Alex J. Sagady & Associates
PO Box 39, East Lansing, MI 48826
(517) 332-6971; ajs@sagady.com

Forward

This document is one in a series produced for the Sierra Club Great Lakes Program in order to facilitate and increase public understanding of toxic substance issues and the connection between toxic air pollution, Great Lakes water pollution and effects on human health and the environment.

In this document, we brief the reader on current provisions in Indiana statutes and state administrative codes addressing the matter of toxic air pollution. Our exclusive focus is on policies that go beyond minimum federal requirements in controlling toxic air pollution. The Sierra Club Great Lakes Program hopes that these educational materials will assist citizens in their use of these regulations and stimulate discussion about potential changes in Indiana policy to more fully protect public health and the environment.

The Sierra Club Great Lakes Program wishes to acknowledge a generous grant from the Joyce Foundation of Chicago to make these efforts possible.

Note to Readers:

This document assumes understanding of some terms and some of the basic science of air quality regulation and toxicology that is explained in the Sierra Club Great Lakes Program Airborne Toxicant Education Series document entitled “An Introduction to Airborne Toxicant Evaluation and Regulation.”

Persons who are not already familiar with basic concepts of air quality regulation and toxicology should first read that introductory briefing paper before reading this document.

Table of Contents

1.	Introduction	1
2.	Indiana’s Statutory Provisions Affecting Toxic Air Pollution	1
2.1.	General Duty and Imminent Risk Provisions	1
2.2	Public Disclosure of Information	4
2.3	Site-Specific Toxics Use Inventories and Material Safety Data Sheets	5
2.4	Public Notice and Participation	6
2.5	Municipal Solid Waste Incineration	7
2.6	PCB Incineration	7
2.7	Chemical Munitions Incineration	8
2.8	Open Burning	9
2.9	Existing Styrene Emission Sources	10
2.10	Nuclear Facilities	10
2.11	Management of Lead Acid Batteries	11
2.12	Restrictions on Batteries Containing Mercury	11
2.13	Environmental Marketing Claims	12
3	IDEM Regulations on Toxic Air Pollution	13
3.1	Stack Heights	13
3.2	Indiana’s Air Rules Allow Many Small and Modest Toxic Air Pollution Sources to Escape Permitting and Public Participation Requirements	14
3.3	IDEM Regulations & Practices on Public Notice for Permits	19
3.4	Indiana’s Prevention of Significant Deterioration Permit Requirements for Controlling Certain Toxic Pollutants are More Stringent than Current Federal Requirements	20

3.5	Recent Enactment of IDEM’s New Public Records and Confidential Information Rule May Have Weakened Public Rights to Emissions Data	21
3.6	IDEM Open Burning Regulations	22
3.7	Indiana Rules on Certain Minor Sources of Volatile Organic Compound Emissions are More Stringent than Federal Requirements	23
3.8	Some Provisions of Indiana’s VOC Emission Control Rules May Increase Certain Toxic Emissions	24
3.9	Indiana Rules on Municipal Solid Waste (MSW) Incinerators	25
3.9.1	A 1999 Amendment to IDEM Air Rules Requires More Stringent Emission Restrictions for MSW Incinerators	25
3.9.2	Toxic Air Pollution Aspects Waste Regulation of Municipal Solid Waste Incinerators and Other Incinerator Types	27
4.	IDEM’s Unpromulgated Policy on Community Toxic Air Pollution Impacts	28
5.	Emerging Issues and Rulemaking in Progress	29
6.	Local Air Pollution Control Agency Requirements	30
	Appendix A – 326 IAC 2-1.1-6 Public notice Procedures	32

1. Introduction

The purpose of this document is to brief the reader on current Indiana statutory and regulatory requirements for toxic air pollution that exceed minimum requirements under the Federal Clean Air Act and current EPA regulations. The Sierra Club Great Lakes Program is interested in evaluating whether the current Indiana air rules and regulations protect public health, the environment and the Great Lakes from toxic air pollutants. The Program also wishes to provide the public with background to allow Indiana's commitment on toxic air pollution control and evaluation to be compared to requirements other Great Lakes states.

A public policy agenda document in this series entitled "Indiana Should Significantly Strengthen its Toxic Air Pollution Regulations" articulates the most significant criticisms of Indiana's toxic air pollution activities and lays out the Sierra Club's agenda to protect public health and environment by improving controls over toxic air pollution in Indiana.

This review includes the Indiana Environmental Statutes, the Indiana Air Rules, selected Indiana solid & hazardous waste rules, recent proposed administrative rules and unpromulgated, non-rule Indiana Department of Environmental Management (IDEM) policies.

2. Indiana's Statutory Provisions Affecting Toxic Air Pollution

2.1. General Duty and Imminent Risk Provisions

Indiana's statutes contain a number of general duty, emergency and imminent risk provisions. However, some of these statutory provisions are unclear and contain no guidance on how IDEM should implement them or on the specific obligations to which regulated parties are subject.

In general, citizen environmental advocates are interested in general duty, emergency and imminent risk provisions because these parts of the law provide "residual authority" which might be used to control emissions that affect public health and the environment, interfere with the comfortable enjoyment of life and property, cause public nuisances or seriously jeopardize public health with unreasonable and immediate health risks.

In Indiana, it is considered a "prohibited act" to:

"(1) Discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either along or in combination with contaminants from other sources, into:

(A) the environment; or

(B) any publicly owned treatment works; in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws.”¹

“(7) Construct, install, operate, conduct, or modify, without prior approval of the department, any equipment or facility of any type that may:

(A) cause or contribute to pollution; or

(B) be designed to prevent pollution.”²

In addition, “air pollution” under the statute is defined as:

“Air pollution,” for purposes of air pollution control laws and environmental management laws, means the presence in or the threatened discharged into the atmosphere of one (1) or more contaminants³ in sufficient quantities and of the characteristic duration that:

(1) is injurious to or threatens to be injurious to human health, plant or animal life, or property; or

(2) interferes unreasonably with the enjoyment of life or property.”⁴

However, Indiana Department of Environmental Management (IDEM) staff have stated that they can not automatically carry out these statutory provisions since there are no rules by the Indiana Air Pollution Control Board that define standards to protect the public against odor nuisances and air pollution that affects health or interferes with the enjoyment of life and property. IDEM thus appears to take the position that these provisions do not provide the agency the authority to control odor emissions and toxic air pollution in the absence of a rule set by the Indiana Air Pollution Control Board.

¹ IC 13-30-2-1(1)

² IC 13-30-2-1(7)

³ An “Air contaminant” is further defined for purposes of the air pollution control laws to be: dust, fumes, gas, mist, smoke, vapor or any combination. IC 13-11-2-3

⁴ IC 13-11-2-5

Another provision on air pollution emergencies provides the governor with the authority to order emissions to cease in the presence of an imminent risk, which is air pollution that is immediately and acutely hazardous to life and health. The first section of the air pollution emergency section provides:

“The discharge into the outdoor atmosphere of air contaminants that *would cause air pollution and create a public nuisance* is contrary to the public policy of the state and this article.”⁵ (Emphasis supplied)

Although the section above is entitled “Air Pollution Emergencies: Policy Statement,” the condition of “air pollution” and “public nuisance” do not rise, in and of themselves, to the same level of hazard implied by an the imminent risks posed by an emergency. Although the policy articulated in this section of the statute appears to ban the condition of “air pollution” and “public nuisances,” it is clear that IDEM does not carry out such an interpretation.

The emergency section of the statute goes on to provide:

“(a) Air pollution may at certain times and places so seriously affect the public health and so threaten the population as to warrant emergency powers to prevent or minimize disasters of unforeseen proportions. If the commissioner [of IDEM] determines, in consultation with the commissioner of the state department of health, that air pollution in any area constitutes an unreasonable and emergency risk to the health and safety of those in the area, that determinations shall be immediately communicated to the governor.”⁶

The Governor may then issue a proclamation that an emergency exists and order all persons causing or contributing to the air pollution to reduce or discontinue immediately the problematic emissions of air contaminants.⁷ However, in order to maintain such an action, the governor must request that the Indiana Attorney General commence a court action within 24 hours seeking injunctive relief in a court of competent jurisdiction to stop the emission and to take other appropriate actions. If the Attorney General doesn’t act within 24 hours, then the Governor’s proclamation becomes void.⁸

⁵ IC 13-117-4-1

⁶ IC 13-17-4-2(a)

⁷ IC 13-17-4-2(b)

⁸ IC 13-17-4-3

According to IDEM sources,⁹ an attempt was made to use emergency authority in the case of emissions from Kyle Chemical in NW Indiana last year, but the action could not be sustained in an Indiana court. Furthermore, IDEM does not currently issue notices of violation concerning odors or emissions thought to jeopardize public health. An attempt in 1989-90 to enact Indiana Air Pollution Control Board rules against odors and emissions that interfere with the comfortable enjoyment of life and property as implied by some of the general duty requirements of Indiana law died as a result of industry opposition before the Board.

2.2 Public Disclosure of Information

The most important “right to know” provision of the Indiana Environmental Statutes provides for public disclosure of IDEM’s environmental regulatory files. The statute grants the public the right to gain access to documents held by IDEM that are:

“(1) records, issued permits, permit applications, and related documentation filed with the department; and

“(2) records, reports, and other information obtained under the recording, reporting, monitoring, sampling, information entry, inspection, investigation, and copy requirements of this title.”¹⁰

However, certain trade secret information relating to air pollution and industrial processes may be withheld from disclosure:

“(b) Upon showing satisfactory to the [IDEM] commissioner by any person that all or any part of the records, reports, permits, permit applications, document, or information *other than effluent or emission data*, would, if made public, divulge methods or processes entitled to protection as trade secrets of the person, the commissioner shall consider, treat, and protect all or part of the trade secret records, reports, or information as confidential.”¹¹ (Emphasis added)

The most important caveat for the right to know about toxic air pollution is the phrase “other than effluent or emission data” which is intended to ensure the public’s right to receive all information about stack and fugitive emissions of toxic air contaminants. The Indiana statute does not define the term “emission data.” U.S. EPA

⁹ Private telephone conversation with IDEM Air Enforcement Attorney David McIver, March 9, 2000.

¹⁰ IC 13-14-11-1(a)

¹¹ IC 13-14-11-1(b)

has interpreted the phrase “emission data” to include a wide variety of information concerning industrial facilities, such as the geometry of discharge stacks, individual stack discharge rates at multiple emission point facilities, etc.¹²

However, this type of right to know requirement does not extend to information under the solid waste law about hazardous wastes that are generated, treated, disposed or incinerated. Access to such information would help in assessing potential toxic air pollution from hazardous waste management and process units. No right to know requirement is provided in an analogous section of Indiana's solid and hazardous waste law, which grants broad trade secret protection to information about generation, treatment and disposal of hazardous wastes.¹³

2.3 Site-Specific Toxics Use Inventories and Material Safety Data Sheets

Indiana has enacted a statutory hazardous substance and emergency response provisions in order to carry out the provisions of the federal Emergency Planning and Community Right to Know Act. This Indiana law requires public disclosure of certain hazardous substance information that citizens will find useful to determine hazards and potential emissions which may be released by an industrial facility.

In general, the requirements of Indiana law on these topics are not more stringent than the federal regulatory requirements. However, the enactment of analogous state law requirements on right to know allows citizens to enforce of these rights through Indiana courts. Without an Indiana law, which is not otherwise required under federal law, that particular remedy would not be available.

If a facility is required to maintain material safety data sheets under federal Occupational Safety and Health Administration rules, such a facility must submit copies to the Indiana Emergency Response Commission, the local fire department having jurisdiction and the local emergency planning committee.¹⁴ In addition, such facilities must also prepare and submit emergency and hazardous chemical inventory forms to the same entities.¹⁵

¹² See, for example, federal regulations at 40 CFR §2.301(a)(2)(I) and EPA draft guidance on what constitutes emission data at 56 FR 7041-7043, Federal Register, February 21, 1991.

¹³ See, for example, IC 13-22-7-1

¹⁴ IC 13-25-2-8

¹⁵ IC 13-25-2-9

Under the law, the Indiana Emergency Response Commission and local emergency planning committees must make emergency response plans, materials safety data sheets, lists of chemicals described in the emergency response section of the act, inventory forms and follow up emergency notices available to the general public. Facility owners and operators may require that portions of such information be withheld from disclosure, but material safety data sheets must be disclosed under all circumstances.¹⁶ Citizens may commence a citizen lawsuit to compel compliance with these requirements.¹⁷

You can get all the information you need about the Indiana Emergency Response Commission and local emergency planning committees in Indiana at <http://www.state.in.us/ierc/>

2.4 Public Notice and Participation

Citizens concerned about a new source or renewal permit for hazardous waste disposal facilities (including hazardous waste incinerators) or new permits for a solid waste incinerator can force a public hearing under Indiana law if IDEM has not provided for such a public hearing or a hearing was not held at the applicant's request.

Under the law, citizens can require IDEM to hold a public hearing if they ask for it during the 30 day public comment period that follows the public notice of a pending permit action. Citizens must file a petition signed by at least 100 adult individuals who reside in the county where the facility or proposed facility is located or who own real property within one mile of the site.¹⁸

The public hearing process outlined above is counteracted by another part of the air section of the statute. This part short-circuits the public notice requirements by authorizing the Indiana Pollution Control Board to write rules that allow IDEM decisions on permits and permit modifications to become immediately effective with no public comment.¹⁹ ²⁰

¹⁶ IC 13-25-2-14

¹⁷ IC 13-25-2-15

¹⁸ IC 13-15-3-3 and IC 13-15-3-4

¹⁹ IC 13-17-3-4(b)

²⁰ IC 13-15-5, et seq.

2.5 Municipal Solid Waste Incineration

Indiana's solid waste regulations include certain toxic air pollution requirements for municipal solid waste incinerators, including operational and design practices that will affect toxic air pollution emissions.

The Solid Waste Board must adopt rules providing for:

“(1) Control levels for acid gas, sulfur dioxide, oxides of nitrogen, hydrocarbons, particulates, and other contaminants for which control levels are established by the air pollution control board or the solid waste management board.

(2) Requirements for the sampling and analysis of incineration residues.

(3) Pre-operational requirements.

(4) Requirements for operational safeguards to ensure exclusion from the incinerator of any hazardous wastes subject to regulation under IC 13-22.”²¹

In addition, applications for municipal solid waste incinerator permits must include an engineering description of safety, testing and maintenance procedures for a proposed facility, including an emergency shutdown system, a maintenance schedule and emission testing and reporting requirements.²²

Finally, all municipal solid waste incinerator permits must contain provisions requiring that the operator notify both IDEM and local government authorities if there is any emission in violation of the permit, any violation of operating requirements, any unscheduled shutdown of the incinerator or any damage to the incinerator that could, if unremedied, cause a violation of permit emission requirements.²³

2.6 PCB Incineration

The Indiana Environmental Statutes contain toxic air pollution provisions on incineration of poly-chlorinated biphenyls (PCBs) in both the air and the solid waste sections of the statute.

²¹ IC 13-20-8-3

²² IC 13-20-8-2(5)

²³ IC 13-20-8-6

Indiana air pollution law requires that a person may not burn PCBs in an incinerator unless the person holds a permit issued by the IDEM commissioner specifically authorizing such an activity. In addition, a person wishing to incinerate PCBs must get approval from the county executive of the county in which the facility is to be located, as well as from the local planning commission (if such a body exists).²⁴

The air law also provides that IDEM, together with U.S. EPA and the locality where such PCB incineration is to take place, shall conduct a one-time study of alternative PCB destruction technologies prior to January 1, 1996 for presentation to the governor, legislature and the general public.²⁵

Solid waste rule provisions prohibit burning PCB wastes in an incinerator that also burns municipal solid waste if the solid waste management district where the facility is to be located has not incorporated the facility under its management plan.²⁶

Finally, an applicant for a PCB waste incinerator permit must demonstrate that the proposed destruction or treatment technology has been in operation at an equivalent facility that can demonstrate 99.9999% PCB destruction efficiency and that no other hazardous substance emissions were released in a solid, liquid or gaseous form. In addition, the applicant must show monitoring data from the example facility indicating that no acute or chronic human health effects, or adverse environmental effects would occur. Finally, applicants for PCB waste incinerators must show that adequate resources, equipment and training exist to handle worst case accidents and community evacuation needs.²⁷

2.7 Chemical Munitions Incineration

The Indiana Environmental Statutes contain explicit requirements for permitting of incinerators for destroying chemical munitions.²⁸ Similar to PCB incineration requirements, a person seeking to establish a chemical munitions waste incineration site must show that the proposed “destruction or treatment technology” has been used at a comparable facility for a time sufficient to demonstrate that 99.9999% destruction

²⁴ IC 13-117-10-1

²⁵ IC 13-17-10-3 and 13-17-10-4

²⁶ IC 13-22-3-8

²⁷ IC 13-22-3-9

²⁸ Chemical munitions are defined in the statute at IC 13-11-2-5 to be military agents GA, GB, H, HD, HT, L and VX.

efficiency of the agents to be incinerated. Applicants must also cite emission reports from example facilities to demonstrate that such emissions will not lead to acute or chronic human health effects or adverse environmental effects. Finally, an applicant must provide sufficient training, coordination and equipment needed to ensure adequate emergency evacuation and procedures in the event of a worst case accident.²⁹

2.8 Open Burning

Open burning is a serious toxic air pollution issue for communities and neighborhoods. Emerging information indicates that open burning of trash may be a large contributor to regional emissions of certain persistent, bioaccumulative toxic air pollutants of interest from a Great Lakes deposition standpoint. Indiana's Environmental Statute provisions on open burning are relatively permissive.

Under these statutes, open burning for "maintenance purposes" is permitted for the following categories of open burning activities:

"(1) Vegetation from a farm, an orchard, a nursery, a tree farm, a cemetery, or a drainage ditch.

(2) Wood products derived from pruning or clearing a roadside by a county highway department.

(3) Wood products derived from the initial clearing of a public utility right-of-way if the open burn occurs in an unincorporated area.

(4) Undesirable wood structures on real property; or wood remnants of the demolition of a predominantly wooden structure originally located on real property; located in an unincorporated area."³⁰

Under the statute, a person who is allowed to open burn in these circumstances is not required to obtain a permit or any other authorization from IDEM, a local unit of government or a volunteer fire department.³¹ If a person burns material under these provisions, the burning must not cause a nuisance or fire hazard, must not be conducted

²⁹ IC 13-22-2-10

³⁰ IC 13-17-9-1(a)

³¹ IC 13-17-9-1(b)

during unfavorable meteorological conditions such as high winds, temperature inversions or air stagnation, and must not include asbestos containing materials .³²

In addition, the Environmental Statutes prohibits certain waste-related salvaging operations:

“(8) Conduct any salvage operation or open dump by open burning or burn, cause or allow the burning of any solid waste in a matter that violates either:

(A) the air pollution control laws, or

(B) the rules adopted by the air pollution control board.”³³

2.9 Existing Styrene Emission Sources

Indiana law requires that IDEM shall publish “appropriate standards” for existing sources of styrene emissions from the reinforced plastic composites fabricating industry³⁴. The standards must cover available control technologies, industry work practices, materials available to the industry and recommendations by the Clean Manufacturing Technology Institute.³⁵ See section 5 of this paper for further information about developments in this rulemaking process.

2.10 Nuclear Facilities

Indiana law requires that persons who wish to construct, operate or expand a nuclear power generating facility or nuclear fuel reprocessing plant must obtain a permit from IDEM. Under these provisions, the Indiana Air Pollution Control Board may adopt rules for the issuance of such nuclear facility permits and operational requirements for these facilities.³⁶

The statute provides very specific guidance about regulating radiation hazards:

³² IC 13-17-9-3

³³ IC 13-30-2-1(8)

³⁴ This industry would include such sectors as recreational vehicle, boat and auto part manufacturing.

³⁵ Public Law 224-1999, §21 (Expires 7/1/2001)

³⁶ IC 13-15-9-1 and 13-15-9-2

“(a) Each board [would include the Air Pollution Control Board] *shall adopt* rules and standards under section 2 of this chapter to protect the citizens of Indiana from the hazards of radiation.”

“(b) Each permit required under this chapter according to rules adopted by the boards must specify the maximum allowable level of radioactive discharge.”

“(c) Each permit issued must include a requirement for:

- (1) appropriate procedures of monitoring any discharge; and
- (2) a report of each discharge to the department.” (Emphasis added)

Though required by this state statute, the Indiana Air Pollution Control Board has never adopted such rules.

2.11 Management of Lead Acid Batteries

Lead acid batteries pose a significant threat to human health and the environment if disposed of improperly. For example, when they are burned in municipal waste incinerators, lead will be released into the air. In order to prevent improper disposal and ensure that spent lead acid batteries are recycled at secondary lead smelters who are authorized to receive such waste, the Indiana Environmental Statutes provide lead acid battery recycling and management standards.

Under these provisions, retail establishments, wholesalers and manufacturers that sell lead acid batteries must comply with acceptance, recycling, management standards and disposal requirements. A person who knowingly disposes of a lead acid battery in a manner in violation of the Act is subject to penalties under the Act.³⁷

2.12 Restrictions on Batteries Containing Mercury

Like the lead-acid battery provision, the Indiana Environmental Statutes provision addressing the mercury content in batteries helps reduce mercury emissions from municipal waste incinerators.

Under the law, a person may not sell, offer for sale or offer for promotional purposes an alkaline-manganese battery that contains mercury that was intentionally introduced if the battery was manufactured after December 31, 1995. The provision does

³⁷ IC 13-20-16, et seq.

not apply to alkaline-manganese button cell batteries if each cell does not have more than 25 milligrams of mercury.³⁸

A similar ban is provided for the sale of zinc-carbon batteries³⁹ containing intentionally introduced mercury and button cell mercury oxide batteries⁴⁰ if either of these devices were manufactured after December 31, 1995. Mercury-oxide batteries other than the button cell type may be sold, but retailers must take specific steps to help ensure that these batteries are returned to proper collection, recycling and management sites.⁴¹

2.13 Environmental Marketing Claims

Indiana's Environmental Statutes contain provisions designed to deter false environmental marketing claims for consumer products. For purposes of toxic air pollution, claims for "ozone friendly" products are defined and the state can exercise certain regulatory authority over advertisers who make "green" product claims.

Under the law, it is a violation for any person to represent that any consumer good which the person manufactures or distributes to be covered by an environmental marketing claim if such a claim does not meet trade regulations or guidelines of the Federal Trade Commission or standards provided in this section of Indiana law.⁴²

"Ozone friendly" is defined:

"As used in this chapter, "ozone friendly" or any similar term that connotes that stratospheric ozone is not being depleted through use of production of the product means that a chemical or material released into the environment as a result of the use of production of a product will not migrate to the stratosphere and cause unnatural and accelerated deterioration of ozone."⁴³

³⁸ IC 13-20-17-1

³⁹ IC 13-20-17-2

⁴⁰ IC 13-20-17-3

⁴¹ IC 13-20-17-4

⁴² IC 24-5-17-2(b)

⁴³ IC 24-5-17-6

A person who makes environmental marketing claims must maintain a written document that supports such claims and demonstrates any significant adverse environmental impacts directly associated with the production, distribution, use, or disposal of the consumer good, as well as measures taken to reduce environmental impacts and other documentation.⁴⁴ As written, the statute also appears to address “green” claims on the production of electricity.

A person making environmental marketing claims must disclose all such documentation to IDEM and/or the Indiana Attorney General upon written request. After receiving the documentation, the agency must disclose it to the public.⁴⁵ A person who knowingly violates the act by making deceptive claims is subject to remedies, penalties and potential citizen suits and attorney fee awards.⁴⁶

3 IDEM Regulations on Toxic Air Pollution

3.1 Stack Heights

A pollution discharge stack which is high enough to avoid turbulent eddies and downwash around adjacent buildings helps ensure that ambient air quality impacts from all pollutants will be minimized in adjacent neighborhoods. The Federal Clean Air Act prohibits sources from obtaining credit for excessively high discharge stacks, but does not specifically require that states ensure that emission sources use good engineering practice discharge stack heights for release of air pollutants.

Indiana rule 326 IAC 1-7 requires that emission sources with the potential to emit 25 tons of either particulate matter or sulfur dioxide in a year have discharge stacks that

⁴⁴ IC 24-5-17-12

⁴⁵ IC 24-5-17-13

⁴⁶ IC 24-5-17-14

reflect good engineering practice (GEP)⁴⁷ to limit downwind community ambient air pollution concentrations. Under the rule:

“Sec. 3. (a) All exhaust gas stacks subject to this rule (326 IAC 1-7) for which construction commenced after June 19, 1979, shall be constructed using good engineering practice (GEP). Stack height shall be sufficient to insure that emissions from said stack will not cause excessive ground level concentrations due to atmospheric downwash, wakes, and eddies.”^{48 49}

Although this provision doesn’t apply to stack emissions of volatile organic compounds (in the absence of meeting the particulate and sulfur dioxide criteria), it will apply to many combustion and other types of sources. From the standpoint of limiting potential community ambient air quality impacts, Indiana’s requirement for GEP stacks is more stringent than present provisions of the Federal Clean Air Act.

Unfortunately, asphalt plant stacks are exempted under the Indiana rule from the GEP stack requirements.⁵⁰

3.2 Indiana’s Air Rules Allow Many Small and Modest Toxic Air Pollution Sources to Escape Permitting and Public Participation Requirements

Indiana’s Article 2 rules establish permit requirements for new and modified air pollution sources. These rules are notable for their leniency in allowing some modest sized emission sources to escape permit requirements and public notice opportunities.

⁴⁷ Good engineering practice is determined by the following:

The GEP stack height shall be calculated by adding the height of the supporting or the nearby structure, whichever is largest, to 1.5 times the lesser dimension (height or width) of the supporting or nearby structure. The nearby structure shall be within five (5) times the lesser dimension (width or height) of that structure, but shall in no event exceed 0.8 kilometers (one-half (½) mile). A greater or lesser stack height may be allowed through wind tunnel, field studies or other methods that show to the satisfaction of the commissioner that no such excessive concentrations, due to less than adequate stack height, will result. 326 IAC 1-7-3(a)

⁴⁸ 326 IAC 1-7-3(a)

⁴⁹ Other provisions of the rules limit the maximum discharge stack height that can be credited as good engineering practice in air quality modeling studies to set emission limitations, but these are very similar to existing federal requirements. See 326 IAC 1-7-4.

⁵⁰ 326 IAC 1-7-5(c)

Readers can view a more complete exposition of the Indiana program permitting requirements than can be provided in this paper at:

<http://www.state.in.us/idem/guides/permit/air/airissues.html>

In general, the permit requirements applicable to new sources of toxic air pollutants in Indiana are determined by the source's potential to emit air contaminants. Sources that emit at or beyond the "maximum threshold" in the table below for any pollutant must obtain an air discharge permit from IDEM for new source construction. Sources that emit at a rate equal to or greater than the "minimum threshold" but less than the maximum threshold must register with IDEM but need not obtain a permit for new source or modified source construction. Sources that merely register and do not apply for a permit are not subject to prior public notice requirements. The threshold table follows:

Pollutant	Minimum Threshold (tons/year)	Maximum Threshold (tons/year)
Volatile Organic Compounds (includes many toxic air contaminants) (for sources not required to use emission control equipment to comply)	10	25
Volatile Organic Compounds (for sources that must use air pollution control equipment to comply with VOC emission rules)	5	25
Nitrogen Oxides (NOX)	10	25
Carbon Monoxide	25	100
Sulfur Dioxide	10	25
Particulate Matter	5	25
Particulate Matter less than 10 microns	5	25
Lead	0.2	5
Fluorides	5	25
Hydrogen Sulfide	5	25
Total Reduced Sulfur Compounds	5	25
A Single Clean Air Act Hazardous Air Pollutant	Not Applicable	10
A Combinations of Clean Air Act Hazardous Air Pollutants	Not Applicable	25

The above table is for construction of new sources. There are also rules that affect modification of existing sources as to both permit and registration requirements. However, these are more complex and the reader is referred to the IDEM website and the actual text of the 326 IAC part 2 permitting rules. For hazardous air pollutants, however,

it should be noted that a source must exceed the same 10 ton single HAP/25 ton combination of HAP requirement before a permit is required when is modified.

For sources requiring a permit, the rules allow IDEM to consider the health effects of community toxic air pollution exposure, but these provisions are weak and non-specific for toxic pollutants when compared with common pollutants having a published National Ambient Air Quality Standard:

“Sec. 5. (a) The [IDEM] commissioner shall not issue a registration, permit, modification approval, or operating permit revision under this article if the commissioner determines the terms and conditions of the registration, permit, modification approval, or operating permit revision:

- (1) would allow a source to cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS);
- (2) would allow a violation of a PSD maximum allowable increase;
- (3) do not assure compliance with all applicable air pollution control rules, except as provided by an enforceable compliance schedule; or
- (4) *are not protective of the public health.*

(b) The commissioner may require any source to perform an air quality analysis to demonstrate compliance *with the NAAQS*.⁵¹ (Emphasis added)

Nothing in this language could be used to force the permit to limit the emissions of a specific toxic air pollutant, the evaluation of community ambient concentrations of a such a pollutant, the comparison of predicted ambient exposures to health screening levels, cancer risk limitation or other health/toxicology analysis. There is no requirement for permit applications to provide any such analysis prior to approval.

The only other potential for a vague, non-specific public health review of air emissions occurs for certain emission source categories as described in the footnote below.⁵² For these sources (includes certain lead and copper smelters, medical waste

⁵¹ 326 IAC 2-1.1-5

⁵² 326 IAC 2-5.1-3 provision as follows:

1) The potential to emit is equal to or greater than the following:

(A) One (1) ton or more per year of lead or lead compounds measured as elemental lead and the source is one (1) of the following:

incinerators and chrome plating facilities), IDEM must ensure that a proposed permit contains provisions that ensure "the public health will be protected."⁵³ However, nothing else in the rules describes exactly how such a determination shall be made, what documentation the application must present and what health, environmental and toxicology evidence must be considered.

Finally, some Indiana sources that must obtain permits are allowed to begin extensive construction activities before their permits are finalized. Sources which are not major stationary sources as defined by the Federal Clean Air Act fall in this category. According to IDEM's web site:

-
- (I) A primary lead smelter.
 - (ii) A secondary lead smelter.
 - (iii) A primary copper smelter.
 - (iv) A lead gasoline additive plant.
 - (v) A lead-acid storage battery manufacturing plant that produces two thousand (2,000) or more batteries per day.
 - (B) Five (5) tons or more per year of lead or lead compounds measured as elemental lead and the source is not listed in clause (A).
 - (C) One hundred (100) tons per year of carbon monoxide (CO).
 - (D) Ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants listed pursuant to Section 112(b) of the CAA.
 - (E) Twenty-five (25) tons per year of the following regulated air pollutants:
 - (I) Particulate matter (PM) or particulate matter less than ten (10) microns (PM₁₀).
 - (ii) Sulfur dioxide (SO₂).
 - (iii) Nitrogen oxides (NO_x).
 - (iv) Volatile organic compounds (VOC).
 - (v) Hydrogen sulfide (H₂S).
 - (vi) Total reduced sulfur (TRS).
 - (vii) Reduced sulfur compounds.
 - (viii) Fluorides.
 - (2) The source belongs to any of the following source categories:
 - (A) A source consisting of a chromium electroplating tank, chromium anodizing tank, or an operation subject to 326 IAC 20-8. Sources consisting only of decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent that are subject to section 2 of this rule are not included.
 - (B) A source that includes medical waste incinerators subject to 40 CFR 60, Subpart Ec, 62 FR 48382 (September 15, 1997)*.
 - (C) Area or minor sources that include an emission unit or units that require a Part 70 operating permit under 326 IAC 2-7.

⁵³ 326 IAC 2-5.1-3(e)(C)

“...the applicant may install building supports and foundations, lay underground piping, erect storage structures, dismantle existing equipment, order equipment or control devices, initiate off-site fabrication or temporarily store equipment on-site other than where the permanent installation will occur. However, applicants may not fabricate, erect, or install air pollution control equipment on the facility or at that location intended for the use of that equipment until a permit has been issued.”⁵⁴

In summary, Indiana's current requirements for source permitting allows many emission sources of a size large enough to cause community concern to be sited without requirements for public notice, review or effective health and environmental impact evaluation and state permitting.

3.3 IDEM Regulations & Practices on Public Notice for Permits

Because of the potential interest of readers of this paper in requirements for public notice and public participation on air discharge permits, the entire text of the rule on public notification is reprinted in Appendix A.

In discussions with IDEM staff, it appears that IDEM's practice is to send notifications of proposed permits to citizens who request to be notified about specific named facilities, or groups of facilities in counties or regions of the state. Citizens must write to the following address to get on such mailing lists. Letters should indicate which facility or which geographic group of facilities a citizen wishes to be notified on for purposes of getting public notices about pending decisions on future permit actions:

Chief, Permits Branch, Attn: Paul Dubenetzky
Office of Air Management,
Indiana Department of Environmental Management
PO Box 6015
Indianapolis, IN 46206-6015

In addition, an EPA website at the following location will provide permit information about pending matters on major new source and operating permits, but may not contain information about minor source and non-federal permits:

<http://www.epa.gov/region5/air/permits/inonline.htm>

⁵⁴ See <http://www.state.in.us/idem/guides/permit/air/airconstruction.html>

3.4 Indiana's Prevention of Significant Deterioration Permit Requirements for Controlling Certain Toxic Pollutants are More Stringent than Current Federal Requirements

Many states like Indiana attempted in the mid-1980s to write their own rules in order to run permitting for Federal Prevention of Significant Deterioration (PSD) permits [see also the briefing document in this series on using the PSD program to control certain toxic air contaminants].

However, with the passage of the Federal Clean Air Act amendments, some toxic air pollutants which were formerly PSD pollutants were converted in the federal program to specifically designated hazardous pollutants that were no longer subject to the PSD permitting program. Indiana has not removed these redesignated toxic air pollutants from their PSD program.

As a result, the following toxic air pollutants are still considered PSD pollutants in Indiana, although the U.S. EPA cannot use federal enforcement to ensure these requirements are met. If a physical change or change in the method of operation at an existing major stationary source causes an increase in emissions that exceeds the significance levels in the table below, then such a major modification becomes subject to PSD rules in Indiana, including a requirement to show that the major modification will incorporate Best Available Control Technology and other requirements:

Indiana PSD Toxic Pollutants that are Unregulated by the Federal PSD Program	Significant Emission Level for Modifications (tons/year)
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl Chloride	1

During recent consideration of proposed PSD rule amendments, industry representatives suggested that these four pollutants should be eliminated from the Indiana PSD permitting regulations.

3.5 Recent Enactment of IDEM's New Public Records and Confidential Information Rule May Have Weakened Public Rights to Emissions Data

IDEM’s Article 17 Public Records rule of the Indiana Air Pollution Board,⁵⁵ which was in effect until the end of 1999, tracked the Indiana statutory language⁵⁶ ensuring that:

“Effluent or emission data shall not be confidential information.”⁵⁷

However, in an effort to....

“provide consistent treatment of confidential materials among IDEM program areas, and allow IDEM to simplify and streamline the procedures associated with the submission and handling of confidential information”⁵⁸

...IDEM published a new public records and confidential information rule⁵⁹ and repealed the old rule which contained the specific and broad language prohibiting confidentiality claims on “effluent or emissions data.” The new public records and confidential information rule does not contain the direct statutory prohibition found at IC 13-14-11-1(b).

Instead, the new rule contains a citation to EPA’s regulations on confidentiality determinations found at 40 CFR §2.301. These federal rules contain provisions defining certain types of data to be “emissions data” and other types of data to be “standards and limitations.” An extended discussion of the provisions of 40 CFR §2.301 on these issues is not possible here. However, the abandonment of the clear and broad prohibition against confidentiality designations for effluent and emission data found in the former rule opens the way for industry lawyers seeking to withhold information on emissions and effluents to raise some of the following types of arguments in response to public requests for information:

That the prohibitions on confidentiality designations in the statute are not self-executing and require rulemaking to assert citizen rights to data.

That 40 CFR §2.301 protections for disclosure of emissions data do not cover prospective emissions information on sources that are in the permitting process but

⁵⁵ 326 IAC 17-1 (repealed)

⁵⁶ See discussion under section 2.2 of this paper.

⁵⁷ 326 IAC 17-1-2, Definition of “confidential information” (repealed)

⁵⁸ IDEM Indiana Register notice, 23 IR 1367, March 1, 2000 Indiana Register, Volume 23, #6

⁵⁹ 326 IAC 17.1

which have not yet operated, nor do they cover other information not required under Section 114 of the Federal Clean Air Act.

That 40 CFR §2.301 protections were never meant to cover information which is not required for submittal under the Clean Air Act, such as information required to be submitted in a state air program under non-federal based rules, or that fail to countenance state agency roles and state authorities in the text of the 40 CFR §2.301 decision-making process means that those protections only apply to information submitted to EPA, not information submitted to states.

Perhaps most seriously, a failure to clearly delineate that all emissions and effluent data is subject to public disclosure and that confidentiality designations are absolutely prohibited on this kind of information invites the potential for long delays before access is granted. Such delays could be used to obstruct public access to information necessary to comment during 30 day public comment periods on permit applications.

3.6 IDEM Open Burning Regulations

IDEM open burning air pollution regulations at 326 IAC 4-1 reiterate permissible open burning situations provided in the statute, but go on to restrict other types of potential open burning.

Indiana rule 326 IAC 4-1-2 prohibits all open burning except when such practices are carried out in compliance with the IDEM open burning rule. There are too many exemptions provided to provide a full discussion here, but some highlights from the rule may be instructive.

Perhaps the most important rule requirement is the following section, which is couched as a provision allowing open burning in the situation stated:

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

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

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

(B) Only clean wood products and paper may be burned.”⁶⁰

This provision appears to rule out burning of trash and garbage at all Indiana residences. Section 4.1(c) provisions appear to prohibit all private residential burning of any kind in Clark, Floyd, Lake or Porter Counties.⁶¹

IDEM air regulations do not allow any permits for open burning of wastes generated on site by any business.⁶²

IDEM solid waste regulations ban open burning at municipal solid waste landfills⁶³ and at Type I, at Type II and non-municipal solid waste landfills,⁶⁴ and at restricted waste site, Type III and construction/demolition site landfills.⁶⁵

3.7 Indiana Rules on Certain Minor Sources of Volatile Organic Compound Emissions are More Stringent than Federal Requirements

Many toxic air pollutants are also volatile organic compounds (VOCs). Although the Federal Clean Air Act requires Best Available Control Technology (BACT) at major stationary sources of VOCs, there is no such requirement for minor sources less than 100 tons per year for many industrial sectors in most areas of the U.S.

Indiana requires a demonstration and installation of BACT for all volatile organic compound emission sources emitting 25 tons per year and greater.⁶⁶ The requirement applies to all new sources permitted after January 1, 1980. This requirement has the indirect effect of providing for a relatively robust level of emission control technology for many volatile toxic air pollutants.

However, the BACT requirement does not apply to several toxic chemicals which are specifically exempted from VOC control requirements because they do not participate in smog formation. Examples of chemicals in the Indiana rules that don't participate in

⁶⁰ 326 IAC 4-1-3(c)(2)

⁶¹ 326 IAC 4-1-4.1(c)

⁶² 326 IAC 4-1-4.1(d)(12)

⁶³ 329 IAC 10-20-9

⁶⁴ 329 IAC 10-28-9

⁶⁵ 329 IAC 10-36-9

⁶⁶ 326 IAC 8-1-6

smog formation but nevertheless still display important environmental toxicity include methyl chloroform, most chlorofluorocarbons and hydrogenated chlorofluorocarbons.⁶⁷

3.8 Some Provisions of Indiana's VOC Emission Control Rules May Increase Certain Toxic Emissions

Under Indiana's general rule for the control of volatile organic compounds, certain sources are entitled to relax emission control requirements during seasons of the year when smog is not a problem.

“The owner or operator of a source using a natural gas afterburner [for thermal or catalytic incineration of volatile organic compounds] incineration method may petition the commissioner for permission to not operate the natural gas afterburner during the months of November, December, January, February, and March. The commissions may allow such exemption if the owner or operator adequately demonstrates that the operation of the natural gas afterburner is not required for control of toxic substances or odor.”⁶⁸

The rule does not provide specific guidance on how such a toxic substance and/or odor control demonstration for an uncontrolled emission source would be made to IDEM.

Another provision of Indiana's VOC control rules has the effect of encouraging emissions of unregulated toxic emissions:

“The emission limitations specified in this article shall be achieved through one (1) or any combination of the following:

“The use of non-photochemically reactive hydrocarbons as defined in 326 IAC 1-2-48.”⁶⁹

There are no mandatory minimum control technology or health effects evaluation requirements governing such non-photochemically reactive air contaminants. Such materials include the toxic solvents methyl chloroform, acetone, chlorofluorocarbons, perchloroethylene and methyl acetate. Indiana allows uncontrolled emissions of these substances.

⁶⁷ See, for example, 326 IAC 1-2-90 and 326 IAC 1-2-48

⁶⁸ 326 IAC 8-1-2(a)(2)

⁶⁹ 326 IAC 8-1-2(a)(6)

3.9 Indiana Rules on Municipal Solid Waste (MSW) Incinerators

3.9.1 A 1999 Amendment to IDEM Air Rules Requires More Stringent Emission Restrictions for MSW Incinerators

Pursuant to the Federal Clean Air Act, U.S. EPA has published “emission guidelines” for limiting air pollutants emitted by municipal solid waste incinerators. EPA guidelines.⁷⁰ States are required to write rules that conform to these minimum requirements for both small⁷¹ and large⁷² MSW incinerator units.

The Indiana Pollution Control Board published final regulations in January, 1999 that regulated large municipal solid waste incineration units greater than 250 tons per day provided that construction commenced on these units on or before September 20, 1994,⁷³ which are the older, so-called “large” MSW incineration units. The Board has not enacted regulations covering the “small” incineration units referenced in the EPA regulation, although it is not known to this reviewer as to whether any such applicable units are found in the State of Indiana.

Aspects of Indiana's 1999 rule amendments covering are more stringent than the minimum EPA emission guidelines, sometimes significantly so. Below is a table that compares the requirements of the EPA guidelines for the applicable large MSW incineration units with the corresponding requirements of the current IDEM regulation.⁷⁴ The limits which are identical to current federal emission guidelines are not shown. Most of these emission limitations are expressed as mass per unit volume stack gas concentrations at the MSW incinerator emission stack:

⁷⁰ Emission guidelines published at 40 CFR 60, Subpart Cb

⁷¹ A “small” MSW incinerator unit has the capability of burning greater than 35 million grams per day but less than or equal to 225 million grams of municipal solid waste per day. Note that this applies to individual incinerator units at a plant and not to the entire incinerator plant as a whole, unless there is only one incinerator unit at the facility.

⁷² A “large” MSW incinerator unit has the capability of burning greater than 225 million grams of municipal solid waste per day. Note again the “unit” vs. entire facility distinction discussed in footnote 71.

⁷³ 250 tons per day is essentially equivalent to 225 Mg per day.

⁷⁴ IDEM's large MSW incinerator regulation is found at 326 IAC 11-7

MSW Waste Incinerator Stack Gas Pollutant	EPA's Subpart Cb Emission Guideline Limit for Large MSW Incinerators	Limit under IDEM's 326 IAC 11-7 Rule for Large MSW Incinerators
Particulate matter	27 milligrams per dry standard cubic meter	23 milligrams per dry standard cubic meter
Lead	0.49 milligrams per dry standard cubic meter	0.44 milligrams per dry standard cubic meter
Sulfur dioxide	31 parts per million by volume or a 75% reduction from uncontrolled emissions	29 parts per million by volume or an 80% reduction from uncontrolled emissions
Total mass of chlorinated dibenzo-dioxins/furans	60 nanograms per dry standard cubic meter for units controlled by an electrostatic precipitator 30 nanograms per dry standard cubic meter for units controlled by non-ESP emission control systems	30 nanograms per dry standard cubic meter for all large MSW incinerators regardless of which emission control system is used
Hydrogen chloride	31 parts per million by volume or 95% reduction from uncontrolled emissions	29 parts per million by volume or 95% reduction from uncontrolled emissions
Nitrogen oxides	200-250 parts per million by volume depending on type of plant; no NOX control requirement for mass burn refractory combustor	205 parts per million by volume for all MSW incinerators
Carbon monoxide	50-250 parts per million by volume depending on type of combustor	100 parts per million by volume limit more stringent for units that burn coal and refuse derived fuel

As can be seen from the table, certain IDEM requirements for these existing MSW incinerators are more stringent than what is required by EPA in their emission guidelines.

3.9.2 Toxic Air Pollution Aspects Waste Regulation of Municipal Solid Waste Incinerators and Other Incinerator Types

Indiana's Solid Waste Program regulations delve into toxic air pollution aspects of municipal solid waste (MSW) incinerator permitting and operation.⁷⁵ Applications for MSW incinerators must include "calculations of the minimum residence time of the combustion gases in the incinerator"⁷⁶ and "a discussion of the residence time of the waste in the combustion chamber and the percent burnout achieved."⁷⁷ The need to ensure as near complete destruction of toxic compounds as is technically feasible justifies both of these requirements, but the regulation provides no numerically enforceable engineering standards on these issues.

The solid waste regulations also require "estimates of emission rates of acid gases, sulfur dioxide, nitrogen oxides, hydrocarbons, particulates, heavy metals and products of incomplete combustion."⁷⁸ The applicant must also provide "a discussion of the procedures to prevent the receipt and subsequent combustion of hazardous waste as regulated under IC 13-7-8.5 and 329 IAC 3.1."⁷⁹

Finally, the IDEM commissioner has the discretion to impose additional requirements on the applicant based on the "size, design, and location of the facility and the potential health and environmental hazards posed by the proposed incinerator." The toxic air pollution related requirements involve:

"(A) a pre-operational emission test plan that includes a detailed description of the methods for sampling and analyzing stack emissions and incinerator and control equipment residues; and

(B) a detailed health risk assessment that utilized the results of the emissions tests."⁸⁰

Unfortunately, the high emission thresholds in the permit requirements in the IDEM air program and the effect of the waste handling capacity provisions in the "permit by rule" approach of IDEM's solid waste incinerator regulations⁸¹ mean that many small

⁷⁵ 329 IAC 11-17-1 and 329 IAC 11-18-1

⁷⁶ 329 IAC 11-17-1(1)(E)

⁷⁷ 329 IAC 11-17-1(1)(F)

⁷⁸ 329 IAC 11-17-1(1)(H)

⁷⁹ 329 IAC 11-17-1(1)(K)

⁸⁰ 329 IAC 11-17-1(2)

⁸¹ All solid waste incinerators with a design capacity of less than 10 tons per day and infectious waste incinerators with a design capacity of less than 7 tons per day will be deemed to

incinerators can operate with effective state regulation, oversight or emission controls on pollutants typically generated even in small incineration processes.

4. IDEM's Unpromulgated Policy on Community Toxic Air Pollution Impacts

IDEM's Office of Air Management Air Modeling Section has published guidance on evaluating the ambient impacts of some specific toxic air pollution emissions in the community.⁸²

Under this policy, IDEM models the ambient impact of emissions on the surrounding community during permit reviews for new and modified sources of hazardous air pollutants designated under the Federal Clean Air Act if the amounts of emissions exceed the thresholds shown in the table below:

Source Type	Single Hazardous Pollutant Threshold	Multiple Hazardous Air Pollutant Combined Threshold
New Major HAP Source	10 tons/year	25 tons/year
Reconstruction or Modification of an Existing Major HAP Source	4 tons/year	10 tons/year

For reconstructed or modified hazardous air pollutant (HAP) sources, only the incremental pollutant increase is modeled and not the full amount of the final expected emissions from the source after it is modified. The policy indicates that the "informal" limit on ambient impacts on an 8 hour averaging time basis is 0.5% of the Permissible Exposure Limit published by the U.S. Occupational Safety and Health Administration.

A source may use a simplified screening air quality model to show that the ambient impacts are less than the informal limit. If the screening model indicates that the informal ambient impact limit would be exceeded, the source may use a more complex, multiple stack model. If the results of that more complex model show that the informal limit is exceeded, then:

have a permit provided they comply with certain regulations. 329 IAC 11-19-2

⁸² An electronic copy of this evaluation and air quality modeling policy is available from Mr. Marc Derf, IDEM OAM Air Modeling Section. You can reach Mr. Derf at MDERF@dem.state.in.us

“ HAP concentrations that exceed this limit are discussed with the applicant and are noted in the permit documents.”

The policy's ultimate goal is stated as:

“All screening analysis for HAPs are done to provide information to the permit reviewer and the public on potential impacts to the public health.”

If there is no OSHA permissible exposure limit, no other health analysis is done. Toxic pollutants that are not on the list of 189 hazardous air pollutants designated under the Clean Air Act are not evaluated.

5. Emerging Issues and Rulemaking in Progress

Three current IDEM activities involving styrene from the reinforced plastics industry, methylene chloride emissions, and IDEM approaches to using environmental risk information are worthy of mention.

The styrene rulemaking activity is already well developed and has involved stakeholder negotiations and draft proposed rules. The primary industries involved are the boat and recreational vehicle manufacturing sectors. The IDEM negotiated rulemaking activity is headed by Ms. Jean Beauchamp of IDEM's Office of Air Management Rule Development section.⁸³ This activity is expected to result in a new Indiana air pollution rule which will likely be nearly equivalent to a future EPA Maximum Achievable Control Technology rule, but is expected to result in getting much earlier emission reductions for Indiana sources than would be provided under federal rulemaking.⁸⁴

Detailed information on the styrene/reinforced plastics stakeholder activity and a draft proposed rule is available at:

<http://www.state.in.us/idem/ctap/fiber/rule.html>

<http://www.state.in.us/idem/ctap/fiber/seconddrafrule.pdf>

Another multi-media, cross-IDEM division activity involves a working group on risk assessment and communication. This activity is intended to “evaluate resources available to IDEM to improve agency expertise on toxics issues and communication of

⁸³ You may reach Ms. Beauchamp at JBEAUCHA@dem.state.in.us

⁸⁴ Personal telephone conference, Mike Brooks, IDEM OAM Air Toxics Section, March 7, 2000

risk.”⁸⁵ A third activity involves developing “a comprehensive plan to reduce emissions of methylene chloride by March 30, 2000. The plan will establish interim milestones and deadlines and reduction targets from 1996 TRI reporting year as baseline.”⁸⁶ Both of these latter activities are coordinated for IDEM Office of Air Management (OAM) by Mr. Mike Brooks, IDEM OAM Air Toxics Section.⁸⁷

6. Local Air Pollution Control Agency Requirements

Indiana has 6 local air pollution control agencies with either city or county jurisdiction (for the Cities of Hammond, Indianapolis, Gary, Evansville and Anderson; and Vigo County). In general, local agencies in Indiana act under a delegation of authority from the Indiana Department of Environmental Management.

This reviewer contacted all of the local agencies to determine if they had any requirements that were more stringent than those for the state program. About half of the local agencies responded that they require air discharge permits for sources smaller than the emission thresholds used by IDEM. However, none of the agencies had generic requirements that mandated more stringent control technology and health/environmental evaluation requirements for toxic air pollutants.

The only exception was the City of Hammond Department of Environmental Management. A facility owned by Rhodia, Inc. (formerly Rhone-Poulenc) that burns hazardous waste as a fuel in a sulfuric acid furnace is located in Hammond. After approval by the Hammond City Council, a veto by the Mayor of Hammond, and then an override of the veto, the City of Hammond approved an extensive ordinance⁸⁸ to regulate boilers and industrial furnaces that burn hazardous waste. In Hammond, the Rhodia facility is the only such facility. The Hammond City Council also enacted other ordinances and fees, all of which were designed to require the presence of a Hammond Department of Environmental Management resident inspector whose working location is at the Rhodia facility.

⁸⁵ Draft Performance Partnership Agreement between EPA and IDEM, Page 18

⁸⁶ Draft Performance Partnership Agreement between EPA and IDEM, Page 19

⁸⁷ Mr. Mike Brooks can be reached at MBROOKS@dem.state.in.us

⁸⁸ This ordinance can be found at <http://www.ci.hammond.in.us/environmental/ordinance/7508.PDF>

The Hammond ordinance to regulate hazardous waste burning is very stringent and it goes significantly beyond the minimum federal requirements for such facilities.⁸⁹ The Hammond ordinance requires 99.9999% destruction efficiency instead of the requirement for 99.99% efficiency in the federal rule for most principle toxic organic hazardous waste constituents. The ordinance also requires the assessment and limitation of risk for carcinogenic toxic air contaminants to a risk level less than one in 1,000,000 and a limitation on hazards from some non-carcinogenic compounds that is more stringent than analogous limitations found in some state toxic air pollution assessment and regulation programs. Other requirements include stack testing requirements, predictive modeling and a citizen oversight panel.

⁸⁹ Federal requirements for burning hazardous waste at boilers and industrial furnaces are published at 40 CFR §266.100, Subpart H; in addition, EPA recently published new Maximum Achievable Control Technology standards applicable to this source category.

Appendix A – 326 IAC 2-1.1-6 Public notice Procedures

Authority: IC 13-14-8; IC 13-15-2; IC 13-15-3-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5-3; IC 13-17

Sec. 6. (a) Registrations, permits, modification approvals, and operating permit revisions issued under this article shall be subject to the following public notice requirements, except as otherwise required in this article. The commissioner shall notify the public of the opportunity to comment on the proposed approval or denial of the registration, permit, modification approval, or operating permit revision as follows:

(1) The commissioner shall provide notice of the receipt of a permit or operating permit revision application to the following:

(A) The county executive of a county that is affected by the permit application.

(B) The executive of a city that is affected by the permit application.

(C) The executive of a town council of a town that is affected by the permit application.

The commissioner may require a person who submits an application to provide information on the application necessary for the commissioner to implement this subdivision.

(2) The commissioner shall publish a notice requesting comment on the proposed permit or permit revision approval or denial in a newspaper of general circulation in the area where the source or emissions unit is located.

(3) The commissioner shall provide a document supporting the proposed permit or permit revision for public inspection in the offices of the local air pollution control agency or the local health commissioner.

(4) The commissioner shall allow a period of at least thirty (30) calendar days opportunity for public comment.

(5) The commissioner may allow opportunity for a public hearing unless otherwise noted.

(6) The commissioner shall provide notice of the commissioner's issuance or denial to those parties listed in IC 13-15-5-3(c).

(b) The following approvals and operating permit revisions shall not be subject to the public notice requirements of this section:

- (1) Registrations issued pursuant to 326 IAC 2-5.1-2.
- (2) Notice-only operating permit revisions pursuant to 326 IAC 2-6.1-6(c).
- (3) Administrative amendments pursuant to 326 IAC 2-7-11 and 326 IAC 2-8-10.
- (4) A determination by the commissioner that a source is exempt from the requirements of this article.
- (5) A minor permit revision or modification approval under the following:
 - (A) 326 IAC 2-6.1-6(g).
 - (B) 326 IAC 2-7-10.5(d).
 - (C) 326 IAC 2-8-11.1(d).

(c) Within ten (10) days of the submission of an application, each applicant shall place a copy of the permit application or operating permit revision application for public review at a library in the county where the construction or modification is proposed. Each applicant shall notify the commissioner of the location of the library where the copy of the application was placed.

(d) Any person applying for a permit upon land that is either undeveloped or for which a valid existing permit has not been issued shall make, not more than ten (10) working days after submitting the permit application, a reasonable effort to provide notice to all owners or occupants of land adjoining the land which is the subject of the application. Each applicant shall pay the cost of compliance with this subsection. The notice shall be in writing and include the date on which the application was submitted and a brief description of the subject of the application.

(e) Upon written request to the commissioner, a person may be included on a list of persons to receive notification of public comment periods, issuances or denials, or both. (*Air Pollution Control Board; 326 IAC 2-1.1-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 990; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105*)