

Alaska Oil and Gas Association



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EPA Docket Center (EPA/DC),
Environmental Protection Agency
Mail Code 6102(T)
1200 Pennsylvania Ave., NW.,
Washington, DC 20460

RE: Docket ID No. EPA- HQ-OAR-2003-0119, comments on the Commercial and Industrial Solid Waste Incineration (CISWI) regulation (as proposed June 4, 2010).

The Alaska Oil and Gas Association (AOGA) has significant concerns on the aforementioned proposed regulations specifically related to small remote incinerators. Our comments and concerns are as follows:

Definitions (60.2265)

“*Incinerator*”- This definition is proposed to be added to the rule and includes *cyclonic burn barrels*. A definition for *cyclonic burn barrels* has not been included (note- the existing CISWI rule defines a *cyclonic barrel burner* and, as far as we can see, the proposed rule language does not identify any change to this term or definition).

Most importantly, in reviewing the data identified for establishing the Maximum Achievable Control Technology (MACT) floor, no evidence is presented that actual emissions testing data for a *cyclonic burn barrel(s)* (or *cyclonic barrel burner*) was collected. The design and operation of this type of device is significantly different than the types of incinerator devices and the capacity of the units included in the MACT floor determinations. We believe unless the United States Environmental Protection Agency (EPA) has empirical emissions testing data to support the position that emissions from cyclonic burn barrels are equivalent to the types of devices included in establishing the MACT floor, it is inappropriate to include a *cyclonic burn barrel(s)* in the definition of incinerator.

In addition, from a practical perspective we believe, at this time, it is technically infeasible to demonstrate compliance with the proposed emissions limits on a typical cyclonic burn barrel as prescribed by the proposed rule. Cyclonic burn barrels are very small (typically 55 gallons) and the duration of a normal burn cycle is relatively brief (normally less than one hour). For example, a Dioxin/Furan sample typically requires several hours to collect the mass needed to achieve detection limits. This length of sampling is simply infeasible on a typical cyclonic burn barrel operation since it does not have the capacity to burn enough waste during a longer burn cycle.

“*Small Remote Incinerator*”- This new definition includes the specification “...and are farther than 50 miles driving distance to the closest MSW landfill.” In reviewing the preamble and the background

documents (EPA –HQ-OAR-2003-0119-0041, Attachment B) in the docket, it is our understanding the “...50 miles driving distance...” was based on an examination by EPA of the locations for the known population of units that would be regulated under the small remote incinerator category compared to the location of municipal solid waste landfills.

This analysis is deficient. First, not all the units are accessible by vehicle driving from another location so the definition is ambiguous in terms of the applicability to these facilities. Second, the population of affected units may or may not be within 50 miles of a municipal solid waste (MSW) landfill simply because EPA was not aware of the entire population of units falling onto this category. Third, road access can be seasonal in Alaska, so while a MSW landfill may be accessible a portion of the season (e.g. winter with ice roads) for the majority of the year, the units may not be road vehicle accessible from the facility.

To alleviate these issues we propose the following revised language for the definition of *Small Remote Incinerator*:

“...means an incinerator that combusts solid waste, (as defined in RCRA, Subtitle D) has the capacity to combust one ton per day or less solid waste, and is inaccessible by vehicle to a MSW or inaccessible by vehicle via the National Highway System (as defined by the Federal Highway Administration) to a MSW.”

Under 40 Code of Federal Regulations (CFR) 60 Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2005 (the OSWI Rule), EPA provided exemptions for certain incinerators and air curtain incinerators in isolated areas of Alaska. These exemptions were included in the OSWI rule because “alternative disposal options are not available or are economically infeasible.” (see Federal Register Vol. 70, No. 241, p. 74878 and 74879.)

Regulatory Impact Analysis (RIA- April, 2010)

We believe the RIA analysis and conclusions are significantly deficient in several aspects for the small remote incinerators proposed to be regulated under the CISWI regulation. We have three distinct areas of concern regarding the RIA.

Cost and Environmental Impact Analyses- With regard to costs, the RIA does not accurately reflect the costs or the potential environmental impacts from the transfer of wastes to MSW landfills from remote facilities. For facilities inaccessible by vehicle traffic (see discussion under #1), the use of aircraft and/or marine vessels would be necessary to transfer the waste. The costs developed in the RIA appear to only consider on-road trucking costs (which appear low considering the costs do not reflect higher costs associated with operating in Alaska). Moreover, with the use of aircraft and/or marine vessels, there would be additional significant air pollution emissions to be generated (not otherwise generated) and these do not appear to be quantified or compared to the emissions reductions achieved by the shutting down of a solid waste incineration unit. To adequately evaluate these impacts, these costs and additional environmental impacts must be included and compared in the analyses.

AOGA members have performed preliminary analyses for a typical small remote incinerator and estimate additional costs of \$30,000 to \$40,000/ton of waste disposed to comply with the CISWI rule due to the additional shipping costs imposed (aircraft use, marine vessels, etc). In other words, for a unit burning up to one ton of waste per day these additional transportation costs could as high as \$14 million per year. This result contradicts the RIA conclusion (Appendix B and Table 9b) of a net savings for transfer of the waste from a shutdown small remote incinerator to a MSW. In conclusion, we believe the net benefits analysis presented in the RIA is fundamentally flawed and inaccurate.

Human Health and Safety and Wildlife Issues- Moreover, if waste were to be transferred via aircraft and/or marine vessel, due to the extreme weather, there will be long periods of time during which waste must be stored on-site to accumulate an adequate volume to minimize aircraft and/or marine vessel trips and/or work around the harsh Alaska climate to allow for safe travel. This storage introduces significant additional costs for on-site storage facilities and operations that are not considered or addressed in the RIA. Of higher concern are health and safety risks introduced by storing the waste on-site. These risks are elevated with storage time.

For example, AOGA members are deeply concerned for the health and safety risk (both to humans and wildlife) of attracting wildlife (e.g. bears, foxes) to human inhabited facilities with the waste storage on-site. These risks (and additional costs to mitigate these) need to be addressed in the RIA and weighed against the benefits of the proposed CISWI standard. AOGA also would like the opportunity to review these analyses with EPA to ensure these reflect the range of practical issues and costs needing addressed to adequately assess the risks and benefits.

Additionally, the vast majority of oil and gas operations in Alaska are conducted from gravel pads which are required to be limited in size to avoid destruction of sensitive environmental areas such as wetlands. Therefore, no unused space exists on these pads. If this rulemaking results in the shutdown of existing incinerators, gravel pads will need to be expanded to accommodate the necessary storage (assuming that the regulating agencies such as EPA and the Army Corps of Engineers would approve such expansions). EPA appears not to have considered this need in the RIA. We believe this consideration is clearly prescribed under Section 129(A)(2) of the Clean Air Act.

Conflict with the Endangered Species Act (ESA) and Apparent Lack of Consultation with the US Fish and Wildlife Service (USFWS) - Under the section 7(a)(2) of the ESA, EPA is required to consult with the USFWS to ensure that any action EPA authorizes, or carries out, is not likely to jeopardize the continued existence of a listed species (e.g., polar bear). This rulemaking would result in additional storage of food wastes, a polar bear attractant, which is prohibited by the USFWS-approved wildlife interaction plans. The result would be increased bear-human interactions, including deterrence activities, possibly including lethal take in defense of life. This foreseeable outcome of the rulemaking clearly requires consultation.

Dioxin/Furan (TEQ) Standard- Small Remote Incinerator Category

From a technical perspective, we do not believe using a total D/F to TEQ ratio measured from cement kilns to establish a TEQ limit for small remote incinerator is appropriate.

The EPA's MACT floor summary memo (April, 2010) posted on the CISWI rule website as supporting information shows no data for TEQ measurement data for the small remote incinerator category. In

the incinerator category only one unit was displayed as testing both for Total D/F and TEQ and, in that one case, the TEQ exceed total D/F. The result suggests TEQ emissions from small incinerators could be significantly higher as a fraction of total D/F than those measured in cement kilns and proposed to be used as the basis for the limit for the small remote incinerator category.

Empirical data from a variety of small remote incinerators needs to be collected to establish the MACT floor for TEQ emissions for this category. This requirement is consistent with every other proposed limit for this category and the EPA's prescribed MACT floor setting process.

Other Broad Issues and Concerns in the Proposed CISWI Rule

AOGA has additional broad concerns regarding the proposed CISWI rule. While these concerns are not specific to the small remote incinerator category, these concerns could also create significant, if not impossible, obstacles to comply with the proposed rule. These concerns include:

- Applicability of the proposed limits to startup, shutdowns and malfunctions (SSMs) without collection of empirical data from these operating modes for consideration in the floor development.
- Use of the term "capacity" is unclear because the term is not defined with respect to small remote incinerators and the intent of the term is not addressed in the preamble. Because virtually all small, remote incinerators use a batch process, AOGA believes that the appropriate definition of "capacity" is the maximum amount of solid waste that will be combusted in a day. AOGA believes that basing "capacity" on a pound per hour rating is inappropriate because small, remote incinerators cannot be recharged on an hourly basis and/or because the amount of solid waste generated at the small, remote facility is less than the rated capacity of the incinerator.
- Inconsistencies and questionable accuracy of the results of the statistical methods used to derive the proposed numerical limits.
- EPA should clarify whether the proposed rules will be applicable to marine vessels and OCS sources.
- Lack of consideration of the criteria identified in section 129(a)(2) in establishing the proposed floors.
- Ambiguity with respect to continuation of the existing exemptions in the current rule until the compliance date of the proposed rule become effective.

AOGA supports other commenters' concerns on these points and we urge EPA to carefully consider each of these specifically as to how these will impact the small remote incinerator units.

Conclusion/Alternative Proposals

AOGA believes the units included in the small remote incinerator category present unique environmental, human health and safety and wildlife issues with adoption of the proposed CISWI rule. We have attempted to identify and explain these in the above discussion.

Because of the significant negative impacts from the proposed CISWI regulations on our member operations and competitiveness, compared to other United States (without Alaska operations) and

international oil & gas companies, we propose consideration of an exemption for small remote incinerators (as currently defined) from the CISWI rule which are not accessible by the Federal Highway System.

We believe this simple exemption, while not eliminating the total negative impacts (some small remote incinerator units will still be affected and likely choose to shut down rather than attempt to meet the rule limits) to AOGA members, is a prudent measure to achieve the overall objectives of Section 129 while also weighing the benefits and negative environmental impacts (aircraft emissions, marine vessel emissions, wetlands destruction, ESA/polar bear attraction, etc) and increased human safety and wildlife risks from adoption of the standard.

As an alternative to this exemption, we propose revising the definition of small remote incinerator to only include those units inaccessible by the Federal Highway System and adjusting the numerical limits for the remaining units in the small remote incinerator subcategory in consideration of the aforementioned environmental, human health and safety, wildlife safety and ESA issues (as prescribed by Section 129(A)(2)). If this alternative is acceptable to EPA, AOGA is willing to commit to work closely with EPA in reevaluating the floor and developing alternative numerical limits in a timely fashion.

Thank you for your consideration of our comments. If you have any questions, or need to discuss our comments further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Marilyn Crockett". The signature is written in a cursive, flowing style.

MARILYN CROCKETT
Executive Director