



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

*Mitchell E. Daniels Jr.*  
Governor

*Thomas W. Easterly*  
Commissioner

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RECEIVED  
FEB 24 2010

February 24, 2010

Ms. Pamela Blakley  
U.S. EPA, Region 5  
Mail Code AR-18J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

**Re: Indiana University Request for Confirmation  
Regarding Regulatory Exemption**

Dear Pamela:

Per our earlier discussions with Sam Portanova of your staff, Indiana University ("IU") plans to replace in kind economizers on its boilers 3, 4, and 6. Boilers 3 and 4 consist of two boilers with multiple fuel capabilities, constructed in 1959, operating at a maximum capacity of 100 mmBtu per hour heat input when combusting coal or a combination of fuels. Each boiler is equipped with low NOx burners for natural gas and/or fuel oil and each has a multi-clone and a jet-pulse baghouse for particulate control when combusting coal and/or fuel oil. Boiler 6 consists of one boiler with multiple fuel capabilities, constructed in 1970, operating at a maximum design capacity of 190 mmBtu per hour when combusting coal and/or fuel oil. It is also equipped with low NOx burners for natural gas and/or fuel oil and a multi-clone and a jet-pulse baghouse for particulate control when combusting coal and/or fuel oil.

Based on discussions with IU representatives, these boilers are used exclusively for providing steam to the University's campus, which is used to heat the campus buildings. No electricity is generated from these boilers. No product of these boilers is sold to the outside market.

IU plans to replace in kind economizers on these boilers because this installation would reduce fuel usage. The economizers would utilize the stack gases to preheat the boiler feed water temperatures, thereby reducing the amount of coal-fired heat input required to heat the water, thus reducing the boilers' coal usage, assuming all other factors being equal. As a result, it is expected that these changes would cause emissions to decrease.

In reviewing the relevant regulatory requirements, IDEM believes that IU is exempt from some of the Prevention of Significant Deterioration ("PSD") requirements because it has determined that IU is a non-profit educational institution, and, under any emission calculation, that exemption applies to these projects.

Specifically, in Indiana, the applicable PSD rules are set forth in 326 IAC § 2-2. These rules were federally approved into the state implementation plan as of April 2, 2003. *See* 41 Fed. Reg. 9892 (March 3, 2003). Under these rules, a specific exemption applies to non-profit educational institutions. It states:

(h) A source or modification of a source that is or would be a nonprofit health or nonprofit educational institution *shall* be exempt from the requirements of sections 3, 4, and 7 of this rule. 326 IAC § 2-2-2(h) (emphasis added).

Those sections (3, 4, and 7) normally impose the following requirements:

326 IAC § 2-2-3 sets out the requirements that a triggering source apply best available control technology (BACT) for each regulated NSR pollutant, among other things.

326 IAC § 2-2-4 requires that a source or modification triggering this rule must include in its application an analysis of ambient air quality.

326 IAC § 2-2-7 sets out additional analysis requirements, including an analysis of the impairment to visibilities, soils, or vegetation that would result as a result of the modification.

IDEM has determined that IU qualifies as a “nonprofit educational institution” within the meaning of 326 IAC § 2-2-2(h). While IDEM will not require that all institutions seeking the application of this exemption be a state university, in this instance the agency finds sufficient evidence of its educational purpose under Ind. Code § 21-20-2-1, which recognizes Indiana University as a university of the state. In addition, IDEM finds compelling the determinations made by other governmental agencies in assessing whether IU is a “nonprofit” for purposes of this exemption. For example, the Internal Revenue Code exempts “nonprofit” institutions from the payment of federal income taxes pursuant to 26 U.S.C. § 501(c)(3). In the case of IU, the Internal Revenue Service specifically determined that it is a nonprofit institution under § 501(c)(3). Attached is an August 16, 2002 determination letter from the United States Internal Revenue Service (IRS), in which the IRS affirmed the University’s tax exempt status under § 501(c)(3) of the Internal Revenue Code, which provides IDEM with sufficient proof of IU’s nonprofit status. *See* Paragraph 2 of Attachment 1. Accordingly, it is the determination of IDEM that IU qualifies as a “nonprofit educational institution,” and therefore the exemption in 326 IAC § 2-2-2(h) should apply to the projects to be undertaken by IU described *supra*.

Although the plain language of 326 IAC § 2-2-2(h) supports IDEM’s determination, the agency requests confirmation from U.S. EPA concerning the use of the exemption and its application to IU and these specific projects. Therefore, IDEM asks U.S. EPA to confirm that IU is a nonprofit educational institution and that the requirements under 326 IAC § 2-2-3, § 2-2-4, and § 2-2-7 and the corresponding Federal requirements, do not apply to these projects. Please contact me at (317) 233-0203 or [mstuckey@idem.in.gov](mailto:mstuckey@idem.in.gov) with any questions you have regarding this matter.

Sincerely,



Matthew Stuckey, Chief  
Permits Branch  
IDEM, Office of Air Quality

Attachment

*Via E-mail and Regular Mail*

cc: Indiana University  
2735 East 10th Street  
Bloomington, Indiana 47408

**Internal Revenue Service****Department of the Treasury****P. O. Box 2508  
Cincinnati, OH 45201**

Date: August 16, 2002

**Person to Contact:**Gordon Schnur 31-07654  
Customer Service Specialist**Toll Free Telephone Number:**

8:00 a.m. to 6:30 p.m. EST

877-829-5500

**Fax Number:**

513-263-3758

**Federal Identification Number:**

35-6001673

Indiana University  
Financial Management Services  
400 E. 7<sup>th</sup> St., Rm 501  
Bloomington, IN 47405-3024

Dear Sir or Madam:

This letter is in response to your request for a copy of your organization's determination letter. This letter will take the place of the copy you requested.

Our records indicate that a determination letter issued in May 1968 granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section 509(a)(2).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Our records also indicate that a determination letter dated September 16, 1971, determined that your organization is not required to file a Form 990, Return of Organization Exempt from Income Tax.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

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Indiana University  
35-6001673

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

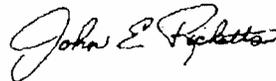
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. You are also required to make available for public inspection a copy of your organization's exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,



John E. Ricketts, Director, TE/GE  
Customer Account Services