
TITLE 329 SOLID WASTE MANAGEMENT BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #06-556**

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM AND RELATED HAZARDOUS WASTE MANAGEMENT

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules concerning the hazardous waste management permit program and related hazardous waste management and has scheduled a public hearing/meeting before the Solid Waste Management Board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: [329 IAC 3.1-1-7](#); [329 IAC 3.1-9-2](#).

AUTHORITY: [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-22-2](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

- (1) the rule constitutes:
 - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
 - (i) is or will be applicable to Indiana; and
 - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
 - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
 - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7](#)(a)(2) from:
 - (A) exposing the rule to diverse public comment under section [IC 13-14-9-3](#) or [IC 13-14-9-4](#);
 - (B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);and
 - (C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

The abbreviated rulemaking process described in [IC 13-14-9-8](#) is being used for this rulemaking because:

- (1) This rulemaking incorporates by reference federal regulations that are required by federal law and makes other changes required by Indiana law.
- (2) This rulemaking is required to retain U.S. Environmental Protection Agency (U.S. EPA) authorization to manage the hazardous waste program in Indiana.
- (3) No substantive modifications of the federal requirements being incorporated are included.
- (4) Because there are no alternatives to incorporation by reference of these rules or adoption of equivalent state rules, there is no benefit to the people of Indiana or the environment from following the full notice and comment procedures of [IC 13-14-9](#).
- (5) [IC 13-14-8-7](#)(b) requires the board to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) within nine (9) months of its effective date.

This rulemaking incorporates by reference the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 273, revised as of July 1, 2006. That edition includes the following amendments published in the Federal Register from September 8, 2005, through April 4, 2006:

Federal Register	Publication Date	Subject
70 FR 53420	September 8, 2005	Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities
70 FR 57769	October 4, 2005	Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemptions)
70 FR 59402	October 12, 2005	National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) ("MACT Rule")
70 FR 59848	October 13, 2005	Cross-Media Electronic Reporting (This rule only includes the implementing amendments. IDEM has not yet decided to develop full-text rules for cross-media reporting based on 40 CFR 4 for Indiana.)
71 FR 16862	April 4, 2006	Resource Conservation and Recovery Act Burden Reduction Initiative

In addition to the amendments included in the 2006 edition of the federal hazardous waste management regulations, this rule would incorporate by reference the following amendments published in the Federal Register from July 14, 2006 through July 28, 2006:

Federal Register	Publication Date	Subject
71 FR 40254	July 14, 2006	Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations
71 FR 42928	July 28, 2006	Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes

The amendments adopted by these rules are amendments to the federal hazardous waste regulations that are incorporated by reference in the Indiana hazardous waste management rules at [329 IAC 3.1](#). Each of these federal amendments was noticed in the Federal Register and the public was provided the opportunity to provide written comments.

This rulemaking also amends [329 IAC 3.1-9-2](#) to adopt the maximum contaminant limit for arsenic that was effective on January 23, 2006, as provided for in 40 CFR 141.23 and 40 CFR 141.62. That limit would be lowered from 0.05 milligrams per liter (mg/L) to 0.01 mg/L. Further information on this federal requirement is available in the January 22, 2001, Federal Register at 66 FR 6976-7066.

In addition, this rule removes an outdated exclusion under Indiana statute for certain metal industries in [329 IAC 3.1-9-2](#) (22) that expired on July 1, 2005, and was not renewed.

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

No element of the draft rule imposes a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Each of these federal amendments is optional or conditionally optional and could result in savings or streamlining for regulated entities. Those savings cannot be quantified at this time.

Small Business Assistance Information

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

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

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

The Small Business Assistance Program Ombudsman is:
Eric Levenhagen

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

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking for amendments to rules concerning the hazardous waste management permit program and related hazardous waste management. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt amendments to the federal hazardous waste management system regulations promulgated by the U.S. EPA under Subtitle C of the Resource Conservation and Recovery Act, as amended, and the Hazardous and Solid Waste Amendments of 1984 thereto (42 U.S.C. 6921 et seq.).
- (3) The public will benefit from prompt adoption of this rule, because it will allow Indiana to retain U.S. EPA authorization to manage the hazardous waste program in Indiana. To retain U.S. EPA authorization, IDEM must adopt these federal regulations as state regulations or adopt substantially equivalent and consistent regulations. Without this authorization, the U.S. EPA would be responsible for management of hazardous waste in Indiana, rather than IDEM. Because businesses, generators, and the public benefit from state management of hazardous wastes, IDEM intends to take the necessary steps to maintain U.S. EPA authorization to manage the hazardous waste program in Indiana.
- (4) The public will benefit from prompt adoption of this rule, because it will make the hazardous waste management program in Indiana consistent with the federal hazardous waste management program.
- (5) I have determined that under the specific circumstances pertaining to this rule there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (6) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality, (317)233-1655 or dial (800) 451-6027 in Indiana, press "0" and ask for extension 3-1655.

DRAFT RULE

SECTION 1. [329 IAC 3.1-1-7](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-7](#) Incorporation by reference

Authority: [IC 13-19-3-1](#); [IC 13-22-4](#)

Affected: [IC 13-14-8](#); 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, 2005, **2006**, and amended **as published in the Federal Register** on: ~~August 5, 2005, at 70 FR 45520 through 70 FR 45522.~~

- (1) **July 14, 2006, at 71 IR 40258 through 71 FR 40280; and**
- (2) **July 28, 2006, at 71 FR 42947 through 71 FR 42949.**

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, 2005.
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, 2005.
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, 2005.
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, 2005.
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, 2005.
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, 2005.
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, 2005.
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, 2005.
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, 2005.

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or on-line at <http://bookstore.gpo.gov/>. The telephone number for the ~~Government Printing Office~~ **Superintendent of Documents** is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(e) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(f) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

(Solid Waste Management Board; [329 IAC 3.1-1-7](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006)

SECTION 2. [329 IAC 3.1-9-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-9-2](#) Exceptions and additions; final permit standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-14-10](#); [IC 13-22-2](#); [IC 13-30-3](#); 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

- (1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.
- (2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and [IC 13-14-10](#)".
- (3) Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under [327 IAC 2-6.1](#) shall be complied with.
- (4) The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of [327 IAC 2-6.1](#).
- (5) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".
- (6) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must

be submitted on EPA form 8700-13B".

(7) In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the commissioner.

(B) In addition to the paper copies required in clause (A), an electronic report in a format prescribed by the commissioner.

(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner."

(8) In addition to the requirements in 40 CFR 264, Subpart E, the reports required by [IC 13-22-4-3.1](#) must be kept on file for at least three (3) years after submission to the department.

(9) In 40 CFR 264, Subpart F, the commissioner will consider the following contaminants in addition to the hazardous constituents listed in 40 CFR 261, Appendix VIII:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Ethylbenzene	100-41-4
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9
Styrene	100-42-5

(10) In 40 CFR 264.93(b), the commissioner may consider [327 IAC 2-11](#) in addition to the factors listed.

(11) Delete 40 CFR 264.94(a)(2), Table 1, and substitute the following:

Table 1. Maximum Concentration of Constituents for Ground Water Protection	
Constituent	Maximum Concentration (mg/L)
Arsenic	0.05 0.010
Barium	1.0
Cadmium	0.005
Chromium	0.05
Lead	0.015
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.0002
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.04
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.003
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

(12) In 40 CFR 264.94(b), the commissioner may consider [327 IAC 2-11](#) in addition to the factors listed.

(13) In 40 CFR 264.99(g), in addition to the constituents listed in 40 CFR 264, Appendix IX, the commissioner may require a facility to monitor for the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9

(14) Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute [329 IAC 3.1-15](#).

(15) Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

(16) In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

(17) Delete 40 CFR 264.301(l).

(18) Delete 40 CFR 264, Appendix VI.

(19) In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

(20) In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

(21) Delete 40 CFR 264.555(e)(6).

(22) ~~The requirements in subdivisions (9) through (13) do not apply to any of the following industries to a greater extent than the standard of conduct established in the related federal regulation or regulatory policy, until July 1, 2005:~~

Industry	Standard Industry Classification Code
Steel works, blast furnaces (including coke ovens), and rolling	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries, not elsewhere classified	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries, except aluminum and copper	3369

(Solid Waste Management Board; [329 IAC 3.1-9-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jul 22, 2004, 10:15 a.m.: 27 IR 3980; errata filed Aug 9, 2004, 10:45 a.m.: 27 IR 4023)

[Notice of Public Hearing](#)

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