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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-7](#) AND DRAFT RULE  
LSA Document #08-673****DEVELOPMENT OF AMENDMENTS TO THE HAZARDOUS WASTE MANAGEMENT RULES CONCERNING  
THE 2008 UPDATE AND AMENDMENTS TO THE F019 HAZARDOUS WASTE LISTING UNDER [329 IAC 3.1](#)****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to incorporate the July 1, 2008, edition of the federal hazardous waste management regulations by reference, including amendments to the listing of wastewater treatment sludges from the conversion coating of aluminum, waste code F019, and to repeal an existing F019 delisting at [329 IAC 3.1-6-7](#) that is more stringent than the new federal provisions. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 3.1-1-7](#); [329 IAC 3.1-6-7](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-22-2](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-7](#) 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 the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the Second Notice of Public Comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under ([IC 13-14-9-3](#)) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

**BACKGROUND**

This rule proposes to incorporate by reference the July 1, 2008, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273. This change includes the following federal rule changes that have occurred since the 2006 annual update:

- Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas: January 2, 2008, 73 FR 57 through 73 FR 72.
- NESHAP: National Emissions Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments: April 8, 2008, 73 FR 18970 through 73 FR 18984.
- Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019: June 4, 2008, 73 FR 31756 through 73 FR 31769.

On June 4, 2008, the U.S. Environmental Protection Agency (EPA) published a change to the listing for wastewater treatment sludges from the chemical conversion coating of aluminum, waste code F019. That change removed "wastewater treatment sludges from the manufacture of motor vehicles using a zinc phosphating process" from the F019 listing. The department proposes to adopt the amended F019 listing in 40 CFR 261.31(a), as promulgated by the EPA on June 4, 2008, at 73 FR 31756.

On June 30, 2006, the Solid Waste Management Board delisted F019 wastewater treatment sludge generated by the General Motors (GM) Fort Wayne Assembly Plant subject to a number of conditions related to waste testing and disposal in a municipal solid waste landfill (LSA Document #05-85, 29 IR 3350). The conditions for that delisting are more stringent than the F019 amendments published by the EPA on June 4, 2008. The department proposes to repeal [329 IAC 3.1-6-7](#) to remove the existing delisting provisions for F019 wastewater treatment sludge generated by General Motors Fort Wayne Assembly Plant, allowing General Motors to operate under the new less stringent amendments to the F019 listing.

The amendment to the F019 hazardous waste listing published on June 4, 2008, was promulgated under

provisions of the Resource Conservation and Recovery Act that were in existence prior to the Hazardous and Solid Waste Amendments of 1984. As a result, this amendment will not go into effect in Indiana (an authorized state) until it is adopted in the Indiana Administrative Code. Because the F019 amendment is less stringent than the existing federal hazardous waste program, Indiana is not required to adopt the amendment.

**IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

**Potential Fiscal Impact**

Based on the EPA's economic impact analysis, the rule to exclude oil-bearing hazardous secondary materials published on January 2, 2008, is estimated to result in a nationwide net cost savings, at the high end, of \$46,400,000 to \$48,700,000, and between \$5,200,000 to \$25,200,000 at the low end, based on two different assessment methodologies. Since Indiana's petroleum refineries represent 1.3% of the nation's refineries (two out of 152), the estimated annual net cost savings could range from \$603,200 to \$633,100 at the high end to \$67,600 to \$331,500 at the low end. (See VIII. "What Are the Costs and Benefits of the Final Rule?", January 2, 2008, 73 FR 68)

The amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors published on April 8, 2008, do not change the economic impact of the portion of the NESHAP rule for hazardous waste combustors that was adopted in the 2006 annual update (LSA Document #06-556) effective January 25, 2008 (DIN: [20080123-IR-329060556FRA](#)). (See III.B. "What are the impacts of the final rule?", 73 FR 18897.)

Based on the EPA's economic impact analysis of the amendments to the F019 hazardous waste listing published on June 4, 2008, this change could result in an annual cost savings to motor vehicle manufacturing facilities covered by the rule of \$71,429 to \$185,715 per facility. (See the summary of the EPA regulatory impact analysis in IX.A. "Executive Order 12866: Regulatory Planning and Review", 73 FR 31764-31765.) The original F019 delisting for GM Fort Wayne Assembly Plant (LSA Document #05-85, 29 IR 3350, June 30, 2006) resulted in an estimated annual cost savings of approximately \$104,000. This rulemaking could result in an additional annual cost savings to GM due to reduced testing required for the wastewater treatment sludge that is no longer included in the F019 waste code. However, any additional cost savings to that plant cannot be quantified at this time.

**Public Participation and Workgroup Information**

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Steve Mojonniere of the Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

**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/compliance/ctap/index.html](http://www.in.gov/idem/compliance/ctap/index.html)

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

Alison Surface

IDEM Compliance and Technical Assistance Program - OPPTA

100 North Senate Avenue, MC 60-04

Indianapolis, IN 46204-2251

(317) 234-1191 or (800) 988-7901

[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter

IDEM Small Business Assistance Program Ombudsman

MC 50-01 IGCN 1307

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

[mtretter@idem.in.gov](mailto:mtretter@idem.in.gov)

**FINDINGS**

The commissioner of IDEM has prepared written findings under [IC 13-14-9-7](#) as follows:

(1) I have determined that adoption of the changes to the hazardous waste management regulations published from January 2, 2008, through June 4, 2008, including the amendments to the listing for wastewater treatment sludge from the chemical conversion coating of aluminum, waste code F019, are in the

best interest of the state of Indiana by reducing costs to regulated entities while maintaining adequate protection of the human environment.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

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Thomas W. Easterly  
Commissioner  
Indiana Department of Environmental Management

### REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#08-673 (SWMB) (2008 Update)

Janet Pittman

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue MC 66-20

Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 233-1655 or (317) 232-7995.

### COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 26, 2008.

Additional information regarding this action may be obtained from Steve Mojonner of the Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

### 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, ~~2006~~, **2008**, and amended as published in the Federal Register on

(1) ~~July 14, 2006, at 71 FR 40258 through 71 FR 40280; and~~

(2) ~~July 28, 2006, at 71 FR 42947 through 71 FR 42949.~~ **June 4, 2008, at 73 FR 31768.**

(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 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; filed Dec 26, 2007, 1:44 p.m.: [20080123-IR-329060556FRA](#))*

SECTION 2. [329 IAC 3.1-6-7](#) IS REPEALED.

#### [Notice of Public Hearing](#)

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