
TITLE 329 SOLID WASTE MANAGEMENT BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #09-206

**DEVELOPMENT OF NEW RULES CONCERNING EXCLUSION OF A HAZARDOUS WASTE FROM
REGULATION UNDER [329 IAC 3.1](#) (DELISTING)**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules for exclusion of a hazardous waste from regulation under [329 IAC 3.1-5-2](#) (delisting). The purpose of this notice is to publish the commissioner's tentative recommendation for rulemaking and to seek public comment on the recommendation and 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 3.1-6-9](#).

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."

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Background

"Delisting" is the process of excluding a hazardous waste that is listed in 40 CFR 261, Subpart D, from regulation as hazardous waste if the generator can show that the waste no longer meets the criteria for which it was listed as a hazardous waste and that it will not exhibit a hazardous waste characteristic. Once delisted, the waste may be disposed of in a solid waste land disposal facility permitted under [329 IAC 10](#).

Under [IC 13-22-2-3](#), generators of hazardous wastes may petition IDEM to exclude a specific hazardous waste listed in 40 CFR 261, Subpart D, that is generated at a particular facility from regulation as a hazardous waste under [329 IAC 3.1](#). This petition must be submitted in accordance with [329 IAC 3.1-5-2](#). The petition must include the information and meet the criteria required by 40 CFR 260.22 (incorporated by reference in [329 IAC 3.1-5-3](#)).

Before petitioning for a delisting, the waste generator must sample the waste over time and analyze the waste for hazardous waste constituents listed in 40 CFR 261, Appendix VIII. This testing must be done following a sampling and analysis plan approved by IDEM. The data resulting from this testing is incorporated into the petition for delisting.

Upon receipt of a petition that meets the requirements of [329 IAC 3.1-5-2](#), IDEM evaluates the petition to determine that:

- (1) the information provided in the petition complies with the requirements of 40 CFR 260.22;
- (2) the waste will meet the criteria in 40 CFR 260.22 when delisted;
- (3) exclusion of the waste from regulation under [329 IAC 3.1](#) will not result in increased risk to human health and the environment; and
- (4) the delisted waste can be safely managed as described in the petition.

The specific criteria for delisting are contained in 40 CFR 260.22. The petitioner must demonstrate in the petition that the waste proposed for delisting meets all applicable criteria.

Delisting of a waste under [329 IAC 3.1-5-2](#) affects waste generated, managed, and disposed of in Indiana. No other state recognizes Indiana's delisting authority. A waste generated in Indiana and delisted under [329 IAC 3.1-5-2](#) will be considered a hazardous waste when it is transported outside of Indiana unless it has also been delisted by the EPA under 40 CFR 260.20 and 40 CFR 260.22 or by the receiving state.

Petition for Delisting

On July 15, 2008, Rumpke of Indiana, LLC (Rumpke) petitioned IDEM to exclude a hazardous waste from listing in 40 CFR 261, Subpart D, incorporated by reference at [329 IAC 3.1-6-1](#), also known as delisting. The hazardous waste to be delisted is described in 40 CFR 261.31 as "F006: Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. F006 wastes are listed for the following constituents: cadmium, hexavalent chromium, nickel, cyanide (complexed).

The hazardous waste for which delisting is sought is 68,000 cubic yards of F006 hazardous waste generated by Rumpke. Rumpke excavated the waste and placed it in a corrective action management unit (CAMU) constructed adjacent to Medora Sanitary Landfill, 546 County Road 870 West, Medora, Indiana. The CAMU is permitted under [329 IAC 3.1](#). Upon adoption of this rule, the solid waste permit for the Rumpke facility at Medora will be amended to include the CAMU. The petition meets all criteria for delisting petitions under [329 IAC 3.1-5](#).

The petition and all documents related to IDEM's review and analysis of the petition are available for viewing and copying in the Indiana Department of Environmental Management, Indiana Government Center North, 100 North Senate Avenue, Room N1101, Indianapolis, Indiana.

Description of Proposed Action

IDEM is proposing to grant the petition submitted by Rumpke to exclude 68,000 cubic yards of F006 hazardous waste from regulation under the hazardous waste rules in [329 IAC 3.1](#). IDEM evaluated all testing information submitted in reviewing this petition.

Analysis of the Petition

The petition was evaluated by the Science Services Branch of the Office of Land Quality using the current procedures and methods used by the EPA.

A risk assessment using a fate and transport model was used to predict concentrations of hazardous constituents released from the waste after disposal to evaluate the potential impacts on human health and the environment. The risk assessment set specific concentrations that the waste (total concentrations) or extracts of the waste must meet. The risk assessment was based on the specified volume of waste disposed in the CAMU. However, delisting levels for the total concentrations, including hexavalent chromium, are at significantly high concentrations and it is highly unlikely that the waste could contain those levels. Therefore, the total concentration delisting levels are not used to determine delisting eligibility.

The risk assessment was done using software developed by EPA Region 6. The Delisting Risk Assessment Software (DRAS) used was version 2.0. The DRAS allows amending various chemical or toxicological parameters of the constituents. The updated Drinking Water Maximum Contaminant Limit (MCL) for arsenic was used. The inhalation reference dose for hexavalent chromium was changed using the parameter listed in the Risk Integrated System of Closure (RISC) tables. The landfill dilution and attenuation factor for cobalt was changed from zero to one.

Rumpke has transferred 68,000 cubic yards of material into the CAMU under the CAMU permit. This includes a significant amount of the dirt cover that was on the waste. The waste was over excavated, and there was no effort to segregate the waste from the cover or dirt below the waste. The DRAS was run using this volume as a one-time disposal.

The waste was sampled and analyzed using the approved sampling and analysis plan. There were 10 samples plus a duplicate collected in December 2002 (CAMU parameters). There were six samples collected in March 2008 (2008 parameters). One sample was analyzed for semivolatile organic compounds (SVOCs). Since the waste was disposed of over 25 years ago, volatile organic compounds (VOCs) were not analyzed as normally would be done for a petition to delist a continuously or recently generated waste.

The analytical data was submitted to and validated by IDEM. Certain results are estimated values, but the hazardous constituent concentrations are below the maximum allowable concentrations set by DRAS and are acceptable.

In addition to the results submitted from the respective sample sets, the 2008 parameters were validated in the 2002 results. Likewise, the CAMU parameters were validated in the 2008 results. Following the DRAS procedures, the highest concentration of a constituent from any sample was entered into DRAS. The results for all constituents met the delisting levels set by DRAS.

The results show that the Toxicity Characteristic Leaching Procedure (TCLP) extract concentrations for RCRA constituents are below the toxicity characteristic levels of 40 CFR 261.24 except for chromium. Some sample extract concentrations were above the 5.0 mg/l characteristic level. All extract chromium concentrations were evaluated using proUCL, an EPA program to calculate a valid upper confidence level (UCL). The program

determined that the results followed a "gamma distribution". The 95% approximate gamma UCL is below 5.0 mg/l while the adjusted gamma UCL is above. Since a significant proportion of the material in the CAMU is not waste, the overall material disposed in the CAMU does not exhibit the characteristic of toxicity.

The DRAS sets the delisting concentrations based on the maximum concentration found in any sample or TCLP extract. If the delisting concentrations of the toxicity characteristic metals set by DRAS are higher than the characteristic levels, the delisting concentration defaults to the characteristic level.

Summary of Conditions for Exclusion

In order to qualify for this delisting, Rumpke complied with all of the following conditions:

- The delisted waste did not exceed any of the delisting concentrations for constituents of concern in Table 1.

Table 1. Maximum Allowable Delisting Concentrations ¹

Constituent	Chemical Abstract Service Registry Number	Maximum Concentration
Antimony	7440-36-0	0.45 mg/L ²
Arsenic	7440-38-2	0.42 mg/L ²
Barium	7440-39-3	100 mg/L ^{2, 3}
Cadmium	7440-43-9	0.280 mg/L ²
Chromium (trivalent)	7440-47-3	5.0 mg/L ^{2, 3}
Chromium (hexavalent)	18540-29-9	3.39 mg/L ²
Cobalt	7440-48-4	49 mg/L ²
Copper	7440-50-8	20,000 mg/L ²
Lead	7439-92-1	5.0 mg/L ^{2, 3}
Mercury	7439-97-6	0.18 mg/L ²
Nickel	7440-02-0	62 mg/L ²
Selenium	7782-49-2	1.0 mg/L ^{2, 3}
Silver	7440-22-4	5.0 mg/L ^{2, 3}
Vanadium	7440-62-2	46 mg/L ²
Zinc	7440-66-6	615 mg/L ²

¹ All concentrations must be measured in accordance with Method 1311, Toxicity Characteristic Leaching Procedure, and applicable analytical methods from U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", Third Edition, available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.

² mg/L means milligrams per liter.

³ The delisting level for this constituent was higher than the toxicity characteristic regulatory level in 40 CFR 261.24; therefore, the toxicity characteristic regulatory level applies.

- No more than 68,000 cubic yards of waste is delisted under this petition. Periodic testing is not applicable.
- The delisted waste is disposed of in a CAMU permitted under this article.
- The entire Rumpke facility continues to monitor ground water as is required by the solid waste permit.

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. This rule is authorized under [IC 13-22-2-3](#). While this delisting imposes a number of conditions on the generator (petitioner), these conditions and the proposed delisting meet the federal standards for delisting at 40 CFR 260.20 and 40 CFR 260.22. Indiana was authorized by EPA to delist hazardous wastes on January 4, 2001 (66 FR 733). This delisting will result in streamlined hazardous waste management operations and significantly reduced costs for the petitioner.

Potential Fiscal Impact

This rulemaking is estimated to result in an annual cost savings of approximately \$250,000 to Rumpke, resulting from reduced costs of managing leachate produced by the CAMU. This is based on information provided by Rumpke.

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 Lydia Kuykendal of the Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) 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

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

The Small Business Assistance Program Ombudsman is:

Brad Baughn

IDEM Small Business Assistance Program Ombudsman

MC 50-01 IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

bbaughn@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings and a tentative recommendation regarding rulemaking on delisting of the waste described in the petition submitted by Rumpke on July 15, 2008. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) Based on the department's analysis of the petition described above, I have determined that the waste described in the petition meets the criteria for delisting in 40 CFR 260.22. At this time, I recommend that the waste described in the petition be excluded from regulation under [329 IAC 3.1-5-2](#) with certain conditions as described in the draft rule attached to and incorporated in these findings. This recommendation is subject to public comment as provided below. This recommendation may be modified or reversed based on the comments received.
- (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.

Thomas W. Easterly

Commissioner

Indiana Department of Environmental Management

INFORMAL PUBLIC HEARING

[329 IAC 3.1-5-2\(d\)](#) states that the commissioner may hold an informal public hearing to consider oral comments on the tentative recommendation for rulemaking. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. A person who requests an informal public hearing on this petition must submit the request in writing to the address below.

REQUEST FOR PUBLIC COMMENTS

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

#09-206(SWMB) (Rumpke F006 Delisting)

Janet Pittman

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management
100 North Senate Avenue MC 65-46
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be submitted by facsimile at (317) 233-5517, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by May 8, 2009.

Additional information regarding this action may be obtained from Lydia Kuykendal, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 3.1-6-9](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 3.1-6-9](#) Waste excluded from regulation; Rumpke of Indiana, LLC, Medora Sanitary Landfill, Medora, Indiana

Authority: [IC 13-14-8](#); [IC 13-14-9-7](#); [IC 13-22-2](#)

Affected: [IC 13-22](#)

Sec. 9. Wastewater treatment sludge, hazardous waste code F006, disposed of in a corrective action management unit adjacent to the Medora Sanitary Landfill, Medora, Indiana, and managed by Rumpke of Indiana, LLC (Rumpke), is excluded from regulation under this article.

(Solid Waste Management Board; [329 IAC 3.1-6-9](#))

[Notice of Public Hearing](#)

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