
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 #09-613

**DEVELOPMENT OF AMENDMENTS TO THE HAZARDOUS WASTE MANAGEMENT RULES AT [329 IAC 3.1](#)
CONCERNING ACADEMIC LABORATORY WASTE**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to adopt one change to the July 1, 2008, edition of the federal hazardous waste management regulations as incorporated by reference at [329 IAC 3.1](#). 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](#).

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 one change to the July 1, 2008, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273. This rule would adopt the federal rule amendment entitled "Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities", promulgated by the U.S. Environmental Protection Agency (EPA) on December 1, 2008 (73 FR 72912-72960). This rule establishes an alternative set of generator requirements applicable to laboratories owned by eligible academic entities. The rule provides a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories at colleges and universities, as well as other eligible academic entities formally affiliated with colleges and universities. This final rule is optional, and colleges and universities and other eligible academic entities formally affiliated with a college or university have the choice of managing their hazardous wastes in accordance with the new alternative regulations as set forth in this final regulation or remaining subject to the existing generator regulations. EPA considers this rule to be neither more nor less stringent than the existing federal hazardous waste program.

[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 EPA's economic impact analysis, the academic laboratory rule published on December 1, 2008, is estimated to result in an annual net cost savings of not more than \$72,000. The EPA economic impact analysis estimates an annual cost savings of \$12,200 for each eligible academic institution and affiliated institution that is a large quantity generator of hazardous waste and elects to take advantage of the provisions of this rule. There are five of these institutions in Indiana. The total annual cost savings available for these large quantity generators would be about \$61,000. The EPA economic impact analysis estimates an annual cost savings of \$1,000 for each

eligible academic institution that is a small quantity generator of hazardous waste. There are 11 of these institutions in Indiana. The additional annual cost savings to the small quantity generators would be \$11,000. The total annual cost savings that could be realized under this rule could be as much as \$72,000 if all eligible academic institutions elect to dispose of their laboratory waste under this rule. (See V.A. "Executive Order 12866: Regulatory Planning and Review", December 1, 2008, 73 FR 72950-72951.)

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 Mojonier in the Office of Legal Counsel, (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

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 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
bbaughn@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 on December 1, 2008, 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.

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:

#09-613 (SWMB) (Academic Lab Waste)
Janet Pittman
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue MC 65-45
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, Thirteenth 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 Development Branch at (317) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 18, 2009.

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

DRAFT RULE

SECTION 1. [329 IAC 3.1-1-7](#), PROPOSED TO BE AMENDED AT [20090204-IR-329080673PRA](#), SECTION 1, 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, 2008, and amended as published in the Federal Register on ~~June 4, 2008, at 73 FR 31768.~~ **December 1, 2008, at 73 FR 72954 through 73 FR 72960.**

(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,

[Notice of Public Hearing](#)

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