TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #09-365

DIGEST

Amends 329 IAC 3.1-11-2 and adds 329 IAC 3.1-11.1 concerning temporary storage and management of spent lead acid batteries. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: June 3, 2009, Indiana Register (DIN: 20090603-IR-329090365FNA).
Second Notice of Comment Period: November 4, 2009, Indiana Register (DIN: 20091104-IR-329090365SNA).
Notice of Public Hearing: November 4, 2009, Indiana Register (DIN: 20091104-IR-329090365PHA).
Change in Notice of Hearing: February 23, 2011, Indiana Register (DIN: 20110223-IR-329090365CHA).
Date of First Hearing: March 15, 2011.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on November 4, 2009, at DIN: 20091104-IR-329090365SNA, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from November 4, 2009, through December 4, 2009, on IDEM's draft rule language. IDEM received comments from the following parties:
Battery Council International (BCI)
Barnes and Thornburg, LLP (BT)
Following is a summary of the comments received and IDEM's responses thereto:

Comment: Proposed 329 IAC 3.1-11.1-3(4) puts a 90-day storage time limit on retailers, wholesalers, manufacturers, and auto salvage yards. This provision is inconsistent with the exemption for generators under 40 CFR 266 Subpart G, which exempts such entities from the 90 day storage requirements of 40 CFR 262. Patchwork requirements at the state level only serve to frustrate collection and recycling efforts. We therefore request that this 90 day requirement be removed or, at the very least, extended to one year (365 days). Three hundred sixty-five days is the maximum storage time allowed for batteries under the Universal Waste Rule (40 CFR Part 273). (BCI)

Response: IDEM has removed auto salvage yards and the ninety (90) day storage time limit from 329 IAC 3.1-11.1-3. This is in recognition of the fact that IC 13-20-16-3 already states that a retailer or wholesaler that accepts a used lead acid battery may not retain possession of the battery for more than 90 days.

Comment: Proposed 329 IAC 3.1-11.1-4(2)(A) requires that large quantity intermediate storage facilities such as warehouses notify the IDEM of the location of storage sites. Proposed 329 IAC 3.1-11.1-4(1)(E) and 3.1-11.1-4(2)(F) also require that small and large quantity intermediate storage facilities have spill response plans maintained on site, respectively.

It is not uncommon for battery manufacturers, wholesalers and secondary lead smelters to use commercial storage warehouses to store used lead-acid batteries when they have quantities that exceed their own storage capacity. BCI is concerned that these commercial warehouses will be wary and refuse to accept these batteries for storage if they have to register with the IDEM. This would inhibit the existing recycling infrastructure that is now so successful (footnote 1: The latest calculated U.S. recycling rate for lead from lead-acid batteries is 96% for the years 2004-2008. BCI National Recycling Rate Study, August 2009, SmithBucklin). Furthermore, the proposed provision is inconsistent with 40 CFR 266 Subpart G, and patchwork requirements at the state level only serve to frustrate recycling.

Moreover, requiring these facilities storing lead-acid batteries to maintain spill response plans on site would be inconsistent with both 40 CFR 266 Subpart G and the Universal Waste Rule. After the IDEM's 266.80 equivalent rule is amended, the exact same lead-acid batteries could be handled as Universal Waste in Indiana and no spill response plans would be required. The IDEM is proposing inconsistent regulation without explanation.

BCI requests that both the proposed notification and spill response plan requirements be eliminated. Mandating that the warehouses comply with the regimented storage requirements, as proposed under 329 IAC 3.1-11.1-4(1) and 3.1-11.1-4(2), should be sufficient to ensure that batteries in commercial warehouses are

properly managed, while still keeping such facilities available for storage. (BCI)

Response: IDEM believes that 329 IAC 3.1-11-4(2)(A) reflects very basic best management practices and will provide clarity to intermediate storage facilities as to management expectations. We do not believe a simple notification requirement is overly burdensome. Both requirements are consistent with the universal waste rules cited by the commentor. IDEM agrees with BCI comments regarding spill response plans and the requirement for spill response plans has been deleted.

Comment: Proposed 329 IAC 3.1-11.1-5(d)(1) and (2) require asphalt or concrete surfaces in loading and unloading areas to be maintained in "good condition" and that cracks and gaps be repaired "as soon as possible". BCI is concerned that these requirements are too subjective and not practicable. The term "good condition" needs to be qualified so that it does not lead to conflicting interpretations by the regulated community and IDEM inspectors. "As soon as possible" also needs to be clarified, since it is difficult to do asphalt or concrete repairs except during shut down periods, particularly because of daily water flushing requirements in air permits. This would cause a direct interference and regulatory conflict with performing repairs. BCI therefore asks that the language in 329 IAC 3.1-11.1-5(d)(1) and (2) be revised to read:

"Loading and unloading areas shall be: (1) on an asphalt or concrete surface maintained in good condition. Asphalt and concrete are maintained in good condition by making necessary repairs to significant cracks or gaps as soon as practicable, taking into account facility operation and shut-down schedules and environmental permit requirements." (BCI)

Response: Loading and unloading areas are already regulated by the application of the general facility standards incorporated by reference in 329 IAC 3.1-11.1-5(a); therefore, rather than revising the language IDEM deleted 329 IAC 3.1-11.1-5(d)(1) and (2).

Comment: Proposed 329 IAC 3.1-11.1-5(c) says that trailers of incoming whole spent lead-acid batteries may be staged on an asphalt or concrete surface maintained in "good condition". Again, BCI is concerned that this term is so subjective that it could lead to confusion among the regulated community and IDEM inspectors. BCI recommends that the language be revised to read: ".. trailers of incoming whole spent lead-acid batteries may be stored on asphalt or concrete maintained in good condition. Asphalt and concrete are maintained in good condition by making necessary repairs to cracks or gaps as soon as practicable, taking into account facility operation and shutdown schedules and environmental permit requirements." (BCI)

Response: Current hazardous waste rules and permits do not address "staging" areas as provided for in this proposed rule. A major purpose of this rule is to resolve long standing differences of opinion regarding the regulatory status of staging areas. These requirements (if adopted), will be reflected in future permits where facility specific concerns may be resolved through the permitting process. IDEM is maintaining the draft rule language as is.

Comment: Proposed 329 IAC 3.1-11.1-5(d)(2) requires loading and unloading areas at battery recycling facilities to be inspected daily for spills and deterioration. However, secondary lead smelters are already subject to effective inspection schedules that are set forth in facilities' Part B permits, which the IDEM prepares. BCI therefore recommends that the inspection schedule in 329 IAC 3.1-11.1-5(d)(2) be revised to be consistent with existing Part B permit inspection schedules. Further, BCI believes that the term "deterioration" is too broad and subjective. To address both issues, BCI suggests that 329 IAC 3.1-11.1-5(d)(2) be revised to read: "(2) inspected for spills and significant cracks and gaps on a schedule consistent with the facility's RCRA Part B permit." (BCI)

Response: IDEM believes the cite referenced by BCI in this comment is actually for 329 IAC 3.1-11.1-5(d); rather than limited to (d)(2). IDEM agrees that loading and unloading areas are already regulated by the application of the general facility standards incorporated by reference in 329 IAC 3.1-11.1-5(a). All of 329 IAC 3.1-11.1-5(d) has been deleted.

Comment: Proposed 329 IAC 3.1-11.1-5(e) seeks to regulate the recycling process which is exempt from hazardous waste regulations pursuant to 40 CFR 261.6(c)(1), and should be substantially revised. First, the draft rule defines the term "intermittent storage" as storage that occurs after reclamation has commenced and before it is complete. See proposed 329 IAC. 3.1-11.1-2(f). This is inconsistent with the scope of the recycling exemption in 40 CFR. 261.6(c)(1), which has been interpreted to mean that "the temporary staging of materials during and incidental to the recycling process... is not subject to regulation", and the fact that the recovered battery components "are an integral part of the recycling process [and] are not discarded and thus are exempt from RCRA regulations."(footnote 2: Ind. Dept. Of Environmental Management v. Quemetco, Inc., Cause No. N-113, Modification of the Final Order of the Solid Waste Management Board, Conclusions of Law Numbers 10 and 12 (1991)). Moreover, the draft rule regulates the recycling of spent lead-acid batteries differently from the recycling of other hazardous waste by making "intermittent storage" by battery reclaimers subject to regulation, while "intermittent storage" by other hazardous waste recyclers is not subject to regulation. IDEM has provided no justification for such inconsistent regulation.

Second, the draft rule would require that new lead-acid battery breaking facilities or new secondary lead smelters obtain a containment building permit in accordance with 40 CFR 264 Subpart DD to store partially reclaimed waste in piles. See proposed 329 IAC 3.1-1.1-5(g). However, as indicated above, 40 CFR 261.6(c)(1) exempts the recycling process from regulation and since the "temporary storage and piling are integral parts of

the cracking/recycling process, the components are exempt pursuant to 329 IAC 3-3-6(c)(1)" [now 40 C.F.R. 261.6(c)(1)]. (footnote3: See footnote 2). Thus, IDEM is seeking to require that the recycling process which is exempt from the hazardous waste regulation be conducted within a RCRA regulated unit.

Finally, the draft rule proposes that existing battery breaking/secondary smelters that have "intermittent storage" meet various requirements. See the proposed 329 IAC 3.1-11.1-5(e) general provisions and 329 IAC 3.1-11.1-7(2) regarding storage area closure. As discussed above, what IDEM calls "intermittent storage" is an integral part of the battery cracking/recycling process which is exempt from RCRA regulations under 40 CFR 261.6(c)(1). IDEM has not provided any explanation for imposing regulations on an integral part of the battery recycling process, nor has IDEM justified why battery recyclers should be subject to regulations not imposed on other hazardous waste recyclers. In addition, such regulation is burdensome with no corresponding benefit.

For all of the reasons above, BCI suggests that IDEM delete 329 IAC §§ 3.1- 11.1-2(f), 3.1-11.1-5(e), (f) and (g) and 329 IAC 3.1-11.1-7(2). (BCI)

Response: It is beyond the scope of these comments to debate in-depth prior interpretations of regulations in an Indiana administrative proceeding. It suffices to say that the recycling exemption at 40 CFR 261.6(c)(1) is not applicable to the case-by-case recycling activities regulated under 40 CFR part 266. This is clearly indicated in the language preceding the recycling process exclusion at 40 CFR 261.6(a)(2). IDEM is not bound by prior interpretations of regulatory language in this new rulemaking. In addition we do not consider "intermittent storage" (even if the recycling process exclusion was applicable) to be included within the recycling process exemption.

IDEM believes these rules are much clearer and less subject to debate than current rules. They will also remove inconsistencies in how our lead acid battery reclaimers have been regulated. Upon adoption, prior interpretations of the old rules will be a moot issue.

Comment: The draft rule should not regulate the recycling process because it is exempt from hazardous waste regulation. The draft rule seeks to regulate the recycling process which is exempt from hazardous waste regulations pursuant to 40 CFR. 261.6(c)(1). First the draft rule defines the term "intermittent storage" as storage that occurs after reclamation has commenced and before it is complete. See Draft 329 IAC 3.1-11.1-2(f). However, the scope of the recycling exemption in 40 CFR 261.6(c)(1) has been interpreted to mean that "the temporary staging of materials during and incidental to the recycling process.... is not subject to regulation" and that the recovered battery components "are an integral part of the recycling process [and] are not discarded and thus are exempt from RCRA regulations." (footnote 1: Ind. Dept. Of Environmental Management v. Quemetco, Inc., Cause No. N-113, Modification of the Final Order of the Solid Waste Management Board, Conclusions of Law Numbers 10 and 12 (1991)). Moreover, the draft rule regulates the recycling of spent lead acid battery differently from the recycling of other hazardous waste recyclers is not subject to regulation. IDEM has provided no justification for such differential regulation.

Secondly, the draft rule requires that new lead acid battery breaking facilities or secondary lead smelters obtain a containment building permit in accordance with 40 CFR 264 Subpart DD to store partially reclaimed waste in piles. See Draft 328 IAC 3.1-11.1-5(g). As indicated above, 40 CFR 261.6(c)(1) exempts the recycling process from regulation and because the "temporary storage and piling are integral parts of the cracking/recycling process, the components are exempt pursuant to 329 IAC 3-3-6(c)(1)" [now 40 CFR 261.6(c)(1)]. (footnote 2: See footnote 1). Thus IDEM is seeking to require that the recycling process, which is exempt from the hazardous waste regulation, be conducted within a RCRA regulated unit. Finally, the draft rule proposes that existing battery breaking/secondary smelters that have "intermittent storage" meet various requirements. See Draft 329 IAC 3.1-11.1-5(e). As discussed above, what IDEM calls "intermittent storage" is an integral part of the battery cracking/recycling process nor has IDEM justified why battery recyclers should be subject to regulations not imposed on other hazardous waste recycler. Therefore, IDEM should delete 329 IAC section 3.1-11.1-2(f), 3.1-11.1-5(d), (e), (f) and (g), and 3.1-11.1-7 from the draft rule. (BT)

Response: Most of this comment is the same as the BCI comment above and the response is the same. IDEM's approach to "intermittent storage" is the same everywhere. IDEM is not aware of other recycling facilities of regulated recyclable materials being treated differently. The commentor has suggested the draft rule requires a containment building permit for new facilities. The rule language cited actually only requires a permit if an exemption is not granted.

Comment: Standards for Retailers, Wholesalers, Manufacturers and Auto Salvage Yards. 329 IAC 3.1-11.1-3 requires that if batteries are stored in containers, the container must be in good condition and be a covered container. 328 IAC 3.1-11.1-3 should also require that if batteries are shipped in containers, for any reason, then the container must have sufficient structural integrity to contain the spent lead acid batteries during shipment and the container must be a covered container. This requirement would make subsequent handling of the batteries safer. (BT)

Response: IDEM does not have authority to regulate shipping containers. Shipping containers are under the jurisdiction of Indiana Department of Transportation, therefore, IDEM will not add any additional requirements. The draft rule does not prevent lead acid battery handlers to require such containers be used for shipping as a condition of acceptance.

Comment: Requirements Applicable to Reclaimers. The purpose of this rulemaking is to make Indiana's

hazardous waste management rules reflect the way reclaimers have historically handled whole spent lead acid batteries by staging them in trailers and subsequently offloading the spend lead acid batteries from the trailers into battery wreckers. This management practice reduces double handling costs. However, IDEM proposes to also impose new and unnecessary requirements on reclaimers. (BT)

Response: IDEM does not agree that the only purpose of this rule is to make the IDEM rules reflect the way reclaimers have historically handled whole spent lead acid batteries. The purpose of this rule is to assure staging and other activities that have historically been issues are done in a manner that is protective of human health and the environment. This rule will bring clarity and consistency to lead acid battery management in Indiana.

In addition, reclaimers often store batteries in areas after off-loading from trailers and prior to reclamation. Therefore, IDEM is providing clarification in 329 IAC 3.1-11.1-5(c) by adding the word "permitted" before "storage".

Comment: 329 IAC 3.1-11.1-5(c) should be revised in two ways. First, the rule should allow for staging of batteries for up to 14 scheduled operating days. This would provide needed flexibility for different operations when not all equipment operates either all the time or every day. Second, the requirements to inspect trailers from the outside within twenty-four (24) hours should be dropped. While this requirement is safer than what IDEM had previously required having the inspector walk across the top of the batteries inside the trailer, this inspection requirement still poses a safety hazard. Employees would either have to climb up on the back of the trailer to view the batteries or inspect using a step ladder. While this may be a safer to inspect, even if an employee looks into the trainers from the outside, it is doubtful that the employee could see any leaking batteries at the head end of the trainer or to be able to readily tell if a pallet has overturned. Exterior inspection of the trailers for signs there are leaking batteries in the trailer (and taking appropriate action if a leak is discovered) provides sufficient environmental safeguards and reduces the risk of falls associated with inspecting the trailers. (BT)

Response: IDEM believes that fourteen (14) calendar days are more than adequate and that tracking "operating time" is overly complex to enforce. At one time, U.S. EPA requested comments on allowing fourteen (14) calendar day staging on batteries held in trailers, but never adopted the provision. Based on prior discussions with the US EPA, IDEM believes that these rules would be challenged if more than fourteen (14) calendar days of staging were allowed. IDEM also believes that fourteen (14) days of battery staging needs to be coupled with the associated management requirements proposed here to protect human health and the environment.

IDEM does agree that exterior inspection of trailers for signs of leakage is adequate, when in conjunction with the surface management requirements of these rules, and has revised the rules accordingly. IDEM also agrees the tracking and enforcement of the twenty four (24) hours from arrival time adds complexity for facilities and inspectors and has revised the rules to eliminate that time frame.

Comment: Finally, 329 IAC 3.1-11.1-5(d), (e), (f) and (g) imposes requirements which IDEM has never demonstrated are needed and which are contrary to Indiana's hazardous waste rules. Moreover, the requirements are not imposed on any other hazardous waste reclaimers. 329 IAC 3.1-11.1-5(d), (e), (f) and (g) should be deleted. (BT)

Response: IDEM disagrees. Singling out spent lead acid batteries for specific regulation was initiated by the US EPA. Every item in the draft rule contained in this notice is in response to past concerns with battery reclaimers, enforcement issues, and the clarity of current rules, all of which have been encountered during the last twenty-nine (29) years of inspections and enforcement experiences with lead acid battery handlers.

Comment: Standards for intermediate storage. IDEM has not demonstrated that there is a need for the requirements set out in 329 IAC 3.1-11.1-3. This rule imposes requirements that are not imposed on entities handling batteries under the Universal Waste Rule. If IDEM wishes to identify the locations where intermediate storage is being conducted, it could require notification by those entities conducting intermediate storage. IDEM has not demonstrated an environmental basis for the requirements in 329 IAC 3.1-11.1-3 and it should be deleted. (BT)

Response: IDEM believes BT is referring to 329 IAC 3.1-11.1-4 which are the standards for intermediate storage facilities. As indicated in the response to BCI's similar comment above, IDEM has removed the spill response plan requirement making it consistent with the Universal Waste rules cited. The rule does require notification for large quantity intermediate storage facilities section (2)(A) also consistent with the universal waste rules.

Comment: Closure and Corrective Action. IDEM has not provided any evidence that 329 3.1-11.1-7 is necessary. 329 IAC 3.1-11.1-7 imposes requirements on persons handling spent lead acid batteries that are not imposed on persons who handle batteries under the Universal Waste Rule. Finally, the requirements are duplicate of other requirements that already apply to entities managing waste under the RCRA requirements. 329 IAC 3.1-11.1-7 should be deleted. (BT)

Response: IDEM disagrees that the agency is limited in this rulemaking by the scope of existing rules. The commentor is confusing "intermediate storage facilities" regulated in section 4 of the draft rule with "intermittent storage" which is addressed in the standards for reclaimers in section 5 of the draft rule. 329 IAC 3.1-11.1-7 was added to clarify that if contamination at the unpermitted intermittent storage areas units cannot be removed the department will address the matter in accordance with the department's risk integrated system of closure (RISC).

All intermittent storage areas at existing facilities are either subject to the standards for existing facilities in section 5(e), corrective action, or subject to existing variances.

The commentor is correct in that this section is somewhat redundant. These rules are intended to provide clarity and consistency to the management of spent lead acid batteries. The redundant portions of this language is intentional and must be referenced as a lead in to the language addressing RISC.

IDEM has removed the reference to 329 IAC 3.1-11-2(3). That section of the rule is no longer necessary, as those requirements are now at section 5(a) of this rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 15, 2011, the Solid Waste Management Board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to 329 IAC 3.1, temporary storage and management of spent lead acid batteries. No comments were made at the first hearing.

329 IAC 3.1-11-2; 329 IAC 3.1-11.1

SECTION 1. 329 IAC 3.1-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-11-2 Exceptions and additions; specific standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2; 40 CFR 266

Sec. 2. Exceptions and additions to standards for the management of specific hazardous waste and specific types of hazardous waste facilities are as follows:

(1) Delete 40 CFR 266.23(b) and substitute the following: "No person may apply or allow the application of used oil as defined in 329 IAC 3.1-4 to any ground surface except for purposes of treatment in accordance with a permit issued by the department under IC 13-15-2. The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited.".

(2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites shall be converted as follows:

(A) 264.141 means 329 IAC 3.1-15-2.
(B) 264.142 means 329 IAC 3.1-15-3.
(C) 264.143 means 329 IAC 3.1-15-4.
(D) 264.147 through 264.151 means 329 IAC 3.1-15-8 through 329 IAC 3.1-15-10.

(3) Delete ~~40 CFR 266.80(b)~~ **40 CFR 266, Subpart G** and ~~substitute the following: "Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:~~

~~(A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.~~
~~(B) All applicable provisions in the following subparts of 40 CFR 264:~~
~~(i) Subpart A through subpart B, excluding 40 CFR 264.13.~~
~~(ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.~~
~~(iii) Subpart F through subpart L.~~
~~(C) All applicable provisions in the following subparts of 40 CFR 265:~~
~~(i) Subpart A through subpart B, excluding 40 CFR 265.13.~~
~~(ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72.~~
~~(iii) Subpart F through subpart L.~~
~~(D) All applicable provisions in 40 CFR 270 and 40 CFR 124".~~" **insert 329 IAC 3.1-11.1.**

(Solid Waste Management Board; 329 IAC 3.1-11-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. 329 IAC 3.1-11.1 IS ADDED TO READ AS FOLLOWS:

Rule 11.1. Spent Lead Acid Batteries

329 IAC 3.1-11.1-1 Applicability

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 1. (a) This rule applies to:
(1) retailers;
(2) wholesalers;
(3) manufacturers;
(4) owners or operators of reclamation facilities;
(5) owners or operators of intermediate storage facilities; and
(6) owners or operators of other storage facilities;
that discard, dispose of, store, or recycle spent lead acid batteries.

(b) Generators of spent lead acid batteries not listed in subsection (a) are not subject to this article provided the batteries are reclaimed.

(Solid Waste Management Board; 329 IAC 3.1-11.1-1)

329 IAC 3.1-11.1-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-118; IC 13-15-2; IC 13-22-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Battery breaking" or "battery cracking" means decapitating, cutting, or otherwise liberating the contents of a spent lead acid battery. This activity includes the following:
(1) Separating any component of the battery from the other components.
(2) Draining acid from the battery.
(3) Removing plates and groups from the battery.

(c) "Battery breaking facility" means a facility that engages in battery breaking or battery cracking.

(d) "Component" means any of the various materials and parts of a spent lead acid battery, including, but not limited to, the following:
(1) Plates and groups.
(2) Rubber and plastic battery chips.
(3) Acid.
(4) Paper cellulose material.

(e) "Intermediate storage facility" means a warehouse or other collection facility used for the temporary storage of whole spent lead acid batteries before sending the batteries to a spent lead acid battery reclamation facility. An intermediate storage facility excludes facilities belonging to the following:
(1) Retailers.
(2) Wholesalers.
(3) Manufacturers.

(f) "Intermittent storage" means any storage activity that occurs after reclamation has commenced but before it is completed.

(g) "Large quantity storage facility" means a facility that accumulates more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries.

(h) "Lead acid battery", as defined in IC 13-11-2-118, means a battery that:
(1) contains lead and sulfuric acid; and
(2) has a nominal voltage of at least six (6) volts.

(i) "Partially reclaimed material" means a solid waste material that has been processed but must be processed further before recovery is complete. Partially reclaimed material results from the process of:
(1) battery breaking; and
(2) component separation;
which results in components including partially reclaimed lead bearing material known as plates and groups.

(j) "Plastic battery chips" means post consumer whole components and any pieces thereof that are constructed of plastic and used in a lead acid battery.

(k) "Plates and groups" means the internal components of a lead acid battery that are constructed of lead or lead alloys, or both. Because of the concentration of leachable lead contained in them, plates and groups are:
(1) spent material which is solid waste; and
(2) hazardous waste (waste code D008).

(l) "Reclaimers" means the following:
(1) Battery breaking facilities.
(2) Smelters.

(m) "Reclamation facility" means a facility involved in the recovery of material from wastes.

(n) "Reclamation process" includes both:
(1) battery cracking; and
(2) smelting;
of spent lead acid batteries for the purpose of recovering lead and other components.

(o) "Recycling facility" means a battery breaking facility or a secondary lead smelter.

(p) "Rubber battery chips" means post consumer whole components of batteries and pieces of batteries that are constructed of rubber and used in a lead acid battery.

(q) "Small quantity storage facility" means a facility that does not accumulate more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries.

(r) "Spent lead acid battery", for purposes of this rule, means any lead acid battery that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing, or any lead acid battery being discarded, abandoned, disposed of, or reclaimed.

(s) "Staging" means holding whole spent lead acid batteries in trailers, which have arrived at a battery breaker or secondary lead smelter, or both, until the batteries can be transferred to a permitted storage area or moved into the processing unit.

(t) "Whole spent lead acid battery" means a spent lead acid battery that has not been subjected to battery-breaking operations.

(Solid Waste Management Board; 329 IAC 3.1-11.1-2)

329 IAC 3.1-11.1-3 Standards for retailers, wholesalers, and manufacturers

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-20-16; IC 13-22-2

Sec. 3. Retailers, wholesalers, and manufacturers that store spent lead acid batteries must comply with IC 13-20-16 and the following:
(1) Spent lead acid batteries must be stored in a:
(A) building with a roof; or
(B) covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(2) Spent lead acid batteries must be stored upright and secured to prevent overturning.
(3) If the spent lead acid battery is not in good condition or begins to leak, the owner or operator of the facility must transfer the battery to a container that is:
(A) in good condition; and
(B) chemically compatible with the contents of the battery.
(4) Any spent lead acid battery being discarded shall be sent to:
(A) a secondary lead smelter authorized by the department;
(B) an intermediate storage location with the intent to deliver to a secondary lead smelter authorized by the department; or
(C) a universal waste handler in accordance with 329 IAC 3.1-16.

(Solid Waste Management Board; 329 IAC 3.1-11.1-3)

329 IAC 3.1-11.1-4 Standards for intermediate storage facilities

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 4. Intermediate storage facilities shall comply with the following:
(1) For small quantity storage facilities that do not accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
(A) If the lead acid battery is not in good condition or begins to leak, the owner or operator must transfer the battery to a container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(B) Batteries must be stored upright and secured to prevent overturning.
(C) Batteries must be stored in a building with a roof or stored in a covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(D) Batteries may not be stored for more than three hundred sixty-five (365) consecutive days.
(E) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at 329 IAC 10 and 329 IAC 11 or hazardous waste rules in this article.
(2) For large quantity storage facilities that accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
(A) The storage facility owner or operator must notify the commissioner of the location of the storage site.
(B) If the lead acid battery is not in good condition or begins to leak, the owner or operator must transfer the battery to a container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(C) Batteries must be stored upright and secured to prevent overturning.
(D) Batteries must be stored in a building with a roof or stored in a covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(E) Batteries may not be stored for more than three hundred sixty-five (365) consecutive days.
(F) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at 329 IAC 10 and 329 IAC 11 or hazardous waste rules in this article.

(Solid Waste Management Board; 329 IAC 3.1-11.1-4)

329 IAC 3.1-11.1-5 Standards for reclaimers

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-15-2; IC 13-22-2

Sec. 5. (a) Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

(1) Notification requirements under 329 IAC 3.1-1-11.

(2) All applicable provisions in the following subparts of 40 CFR 264:

(A) Subpart A through Subpart B, excluding 40 CFR 264.13.

(B) Subpart C through Subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.

(C) Subpart F through Subpart L.

(3) All applicable provisions in 329 IAC 3.1-13

(b) Battery breaking facilities that do not recycle the components on-site shall comply with all applicable generator requirements of 40 CFR 262.34 for the components of the battery that are hazardous wastes, unless an exemption pursuant to 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner.

(c) Trailers of incoming whole spent lead acid batteries may be staged on an asphalt or concrete surface maintained in good condition and shall be processed, or put into permitted storage, within fourteen (14) calendar days of receipt. The following conditions shall be met for staged batteries:

(1) Weekly inspections of the staging area shall be performed as long as trailers remain in the area. Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be stored in a covered container that is:

(A) in good condition; and

(B) chemically compatible with the contents of the battery.

(2) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.

(3) Operating records will consist of documentation of inspections conducted under subdivision (1).

(d) For reclamation facilities existing on the effective date of this rule, the following standards for intermittent storage during reclamation must be met for partially reclaimed wastes, unless an exemption under 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner:

(1) Wastes must be stored inside a completely enclosed structure (with walls and under roof) maintained free of cracks, gaps, corrosion, or other deterioration that could allow hazardous waste to be released.

(2) Wastes must be either:

(A) stored in a container meeting the applicable requirements of 40 CFR 264, Subpart I; or

(B) stored on a base that is chemically compatible with the waste, and constructed of sufficient strength and thickness to support the weight of the waste and any personnel and heavy equipment operating on the base.

(3) If the base is impervious, such as coated concrete, it must be inspected weekly for evidence of cracks or other deterioration and any defects repaired immediately. If the base is not impervious, it must be inspected daily and any deterioration repaired within seventy-two (72) hours of discovery.

(4) For units managing free liquids or treated with free liquids, the owner or operator must include a liquid collection and removal system. The concrete base must be sloped to facilitate drainage.

(5) Waste acid and any other liquid wastes from the recycling process shall be either:

(A) sent to an on-site wastewater treatment facility; or

(B) managed in accordance with all applicable hazardous waste rules.

(6) Contaminants must be contained within the building. An area must be designated for decontamination of personnel and equipment. Any rinsate, if hazardous, must be collected and properly managed according to 40 CFR 262.34. If rinsate is not hazardous, it must be managed in accordance with applicable solid waste rules at 329 IAC 10.

(7) Fugitive dust emissions must be controlled in accordance with 40 CFR 264.1101(c)(1)(iv).

(e) All waste streams generated during the reclamation process identified as hazardous waste under 40 CFR 261 must be managed according to 40 CFR 262.34.

(f) Secondary lead smelters or lead acid battery breaking facilities commencing operations on or after

the effective date of this rule must obtain a containment building permit in accordance with 40 CFR 264, Subpart DD to store partially reclaimed waste in piles, unless an exemption under 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by the commissioner.

(Solid Waste Management Board; 329 IAC 3.1-11.1-5)

329 IAC 3.1-11.1-6 Transporters

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 6. (a) Persons who engage in transporting separated components of a spent lead acid battery must comply with 329 IAC 3.1-8.

(b) Facilities that receive and store separated components of spent lead acid batteries that are a hazardous waste as identified in 40 CFR 261 must comply with the manifest requirements of 40 CFR 264, Subpart E as incorporated by reference in 329 IAC 3.1-9-1.

(c) The requirements of 40 CFR 264, Subpart E do not apply to the transportation of whole spent lead acid batteries.

(Solid Waste Management Board; 329 IAC 3.1-11.1-6)

329 IAC 3.1-11.1-7 Closure and corrective action

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-12-3-2; IC 13-15-2; IC 13-22-2; IC 13-25-5-7

Sec. 7. In addition to the closure requirements incorporated by reference in this rule, the following requirements apply:

(1) Permitted facilities are subject to the closure and postclosure requirements of 40 CFR 264, Subpart G.

(2) At closure of unpermitted intermittent storage areas, the owner or operator must remove all waste residues and contamination from the storage area, including residue on equipment, structures, and soil.

(3) If the contaminated soils cannot be completely removed, the owner or operator must prepare a written plan to close the area in accordance with IC 13-12-3-2 and submit the plan to the commissioner for approval. The written plan must provide information equivalent to a proposed work plan under IC 13-25-5-7(b). If closure requirements are addressed in an exemption received under 329 IAC 3.1-5-4, the facility must follow the closure requirements contained in the exemption.

(4) Corrective action for solid waste management units may be initiated at any time during the life of the facility.

(Solid Waste Management Board; 329 IAC 3.1-11.1-7)

Notice of Public Hearing

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