ARTICLE 3.1. HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM AND RELATED HAZARDOUS WASTE MANAGEMENT

NOTE: IC 13-1 and IC 13-7 were repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.

Rule 1. General Provisions

329 IAC 3.1-1-1 Purpose

Authority: IC 13-7
Affected: IC 13-7

Sec. 1. The purpose of this article is to establish policies, procedures, requirements, and standards to implement the environmental management laws as defined at IC 13-11-2-71. This article is being promulgated for the purpose of protecting and enhancing the quality of Indiana's environment and protecting the public health, safety, and well-being of its citizens. This article establishes a hazardous waste management program consistent with the requirements of the Resource Conservation and Recovery Act (P.L.94-580, 42 U.S.C. 6901 et seq.), as amended (hereinafter referred to as RCRA), and regulations promulgated pursuant to RCRA. (40 CFR 260 through 40 CFR 270, 42 U.S.C. 6901 et seq.) *(Solid Waste Management Division; 329 IAC 3.1-1-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-2 Scope

Authority: IC 13-14-8; IC 13-19-3; IC 13-22-2
Affected: IC 13-11-2

Sec. 2. This article establishes:
(1) standards for:
(A) identifying hazardous waste; and
(B) hazardous waste management procedures for:
(i) generators;
(ii) transporters; and
(iii) owners and operators of hazardous waste facilities; and
(2) the permit program for hazardous waste facilities.
(Solid Waste Management Division; 329 IAC 3.1-1-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)

329 IAC 3.1-1-3 Right of entry

Authority: IC 13-7
Affected: IC 13-7

Sec. 3. The department, or its authorized representative, upon presentation of proper credentials, or by directive of the board, shall have a right to enter upon, to, or through public or private premises, subject to this article, to investigate, take samples, copy all records related to hazardous waste, and inspect for compliance with the requirements imposed under environmental management laws as defined at IC 13-11-2-71, or this article, or to determine whether a violation or threatened violation exists, in accordance with any or all of the following purposes:
(1) For the purpose of determining whether any person is subject to the requirements of environmental management laws as defined at IC 13-11-2-71, or whether any person subject to the requirements of environmental management laws as defined at IC 13-11-2-71 is in compliance with this article.
(2) For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the commissioner has a reasonable belief that a violation of environmental management laws as defined at IC 13-11-2-71 or this article is occurring or is about to occur.
(3) For the purpose of determining whether there has been a violation of any of the provisions of environmental management

laws as defined at IC 13-11-2-71, this article, or any permit or order issued pursuant to environmental management laws as defined at IC 13-11-2-71 or this article.

(Solid Waste Management Division; 329 IAC 3.1-1-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-1-4 Conduct of inspection and sampling

Authority: IC 13-7
Affected: IC 13-7-8.5

Sec. 4. Each investigation or inspection shall be completed with reasonable promptness. If the commissioner's authorized representative obtains any sample prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt identifying the sample obtained and, if requested, a portion of the sample equal in volume or weight to the portion retained. If any analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge. *(Solid Waste Management Division; 329 IAC 3.1-1-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-5 Enforcement

Authority: IC 13-7
Affected: IC 4-21.5; IC 13-7

Sec. 5. The administration and enforcement of this article shall be in accordance with IC 13-30-3 and IC 4-21.5. *(Solid Waste Management Division; 329 IAC 3.1-1-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-6 Penalties

Authority: IC 13-14-8; IC 13-19-3; IC 13-22-2
Affected: IC 13-22-14; IC 13-30

Sec. 6. Penalties for violations of this article are as outlined in IC 13-30. *(Solid Waste Management Division; 329 IAC 3.1-1-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-1-7 References to the Code of Federal Regulations

Authority: IC 13-19-3-1; IC 13-22-2
Affected: IC 4-22-2-21; IC 13-14-8

Sec. 7. (a) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the July 1, 2015, edition, including the amended provisions as published on January 13, 2015, at 80 FR 1771 through 80 FR 1814, and that became effective on July 13, 2015.

(b) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the text of the rule. *(Solid Waste Management Division; 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; filed Sep 11, 2009, 2:39 p.m.: 20091007-IR-329080673FRA; filed Aug 27, 2010, 11:54 a.m.: 20100922-IR-329090613FRA; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA; filed Mar 15, 2013, 2:44 p.m.: 20130410-IR-329120506FRA; filed Jun*

3, 2015, 1:21 p.m.: 20150701-IR-329140288FRA; errata filed Jul 7, 2015, 10:44 a.m.: 20150729-IR-329150202ACA; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)

329 IAC 3.1-1-8 Reference not specifically adopted

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

Sec. 8. (a) Any reference to 40 CFR 122 or 40 CFR 124, in any provisions as adopted by reference from 40 CFR 260 through 40 CFR 270, means the permitting procedures contained in 329 IAC 3.1-13.

(b) Any reference to 40 CFR 279, in any provision as adopted by reference from 40 CFR 260 through 40 CFR 270, means 329 IAC 13. *(Solid Waste Management Division; 329 IAC 3.1-1-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-9 Conversion of federal terms

Authority: IC 13-14-8; IC 13-19-3-1
Affected: IC 13-14-8; 40 CFR 260 through 40 CFR 270

Sec. 9. (a) When used in 40 CFR, as adopted in this article, substitute the following unless otherwise indicated:

(1) "Act" means the Environmental Management Act.
(2) "Administrator" means the commissioner of the Indiana department of environmental management.
(3) "Agency" means the Indiana department of environmental management.
(4) "Director" means the commissioner of the Indiana department of environmental management.
(5) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
(6) "He" means he, she, or it, without regard to gender.
(7) "Notification requirements of section 3010" means the notification requirements of this article.
(8) "RCRA permit" means state hazardous waste permit.
(9) "Regional administrator" means the commissioner of the Indiana department of environmental management.
(10) "She" means he, she, or it, without regard to gender.
(11) "State", "authorized state", "approved state", and "approved program" means Indiana, except at:
    (A) 40 CFR 260.10 in the definitions of "person", "state", and "United States";
    (B) 40 CFR 262; or
    (C) 40 CFR 270.2 in the definitions of "approved program" or "approved state", "director", "final authorization", "person", and "state".
(12) "United States" means the state of Indiana.
(13) "Variance" means exemption.

(b) The following definitions found in 40 CFR 260.10 are excluded from the substitution of "commissioner of the Indiana department of environmental management" for "administrator" or "regional administrator" in subsection (a):

(1) Administrator.
(2) Hazardous waste constituent.
(3) Regional administrator.

(c) The following definitions found in 40 CFR 260.10 are excluded from the substitution of "Indiana department of environmental management" for "environmental protection agency" in subsection (a):

(1) Administrator.
(2) EPA region.
(3) Regional administrator.

(d) The substitution of terms in subsection (a) does not apply in the following portions of 40 CFR 260 through 40 CFR 270 as adopted in this rule:

(1) 40 CFR 261.6(a)(3)(i)(A).
(2) 40 CFR 261.6(a)(3)(i)(B).

(3) 40 CFR 262.11.
(4) 40 CFR 262.21.
(5) 40 CFR 262.51.
(6) 40 CFR 262.52.
(7) 40 CFR 262.53. See 329 IAC 3.1-7-2 for additional information.
(8) 40 CFR 262.54. See 329 IAC 3.1-7-2 for additional information.
(9) 40 CFR 262.60.
(10) 40 CFR 264.12(a).
(11) 40 CFR 265.12(a).
(12) 40 CFR 270.2.
(13) 40 CFR 270.5.
(14) 40 CFR 270.11(a)(3).
(15) 40 CFR 270.32(b)(2).
(16) 40 CFR 270.32(c).
(17) 40 CFR 270.72(a)(5).
(18) 40 CFR 270.72(b)(5).

(e) In 40 CFR 263, all references to "EPA", "United States", and "administrator" are retained. *(Solid Waste Management Division; 329 IAC 3.1-1-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA, eff Sep 5, 2006)*

329 IAC 3.1-1-10 Notification

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

Sec. 10. Every hazardous waste generator, transporter, or owner or operator of a hazardous waste facility shall notify the commissioner of activities subject to this article on forms provided by the commissioner unless the activity is exempt from the notification requirements for hazardous waste generated by conditionally exempt small quantity generators under 329 IAC 3.1-6. *(Solid Waste Management Division; 329 IAC 3.1-1-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-1-11 Notification for existing generators, transporters, and owners or operators of hazardous waste facilities

Authority: IC 13-7
Affected: IC 13-7-8.5

Sec. 11. (a) Any person who generates, transports, treats, stores, recovers, or disposes of hazardous waste, as defined in 329 IAC 3.1-6, shall notify the commissioner within ninety (90) days from the effective date of this article, unless such notification has been previously provided to the regional administrator in accordance with 3010 of RCRA (42 U.S.C. 6930) or in accordance with this article.

(b) Any person who generates, treats, stores, recovers, or disposes of a solid waste which has been determined to be hazardous, or is added to the listing of hazardous waste by any revision of 329 IAC 3.1-6, shall notify the commissioner of such activity, in accordance with section 10 of this rule, this section, and sections 12 through 13 of this rule, no later than ninety (90) days from the effective date of the revision of 329 IAC 3.1-6 which causes the waste to be hazardous or adds the waste to the listing of hazardous waste.

(c) Any person who transports, or offers for transportation, a hazardous waste must first obtain an identification number under section 13 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-1-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-12 Notification for new hazardous waste generators

Authority: IC 13-7
Affected: IC 13-7-8.5

Sec. 12. Any person who becomes a generator of hazardous waste after the ninety (90) day period for notification under section 11 of this rule shall notify the commissioner of such activity within thirty (30) days of the start of generation and obtain an identification number under section 13 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-1-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-12.5 Mailing address for notifications

Authority: IC 13-14-8; IC 13-22
Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 12.5. Unless otherwise provided elsewhere in this article, notifications required by this article must be submitted to:
Indiana Department of Environmental Management
Office of Land Quality, Facility Data Analysis Section
Room 1101
100 North Senate Avenue
Indianapolis, IN 46204-2251.
(Solid Waste Management Division; 329 IAC 3.1-1-12.5; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)

329 IAC 3.1-1-13 Identification numbers

Authority: IC 13-7
Affected: IC 13-7-8.5

Sec. 13. The commissioner shall require the use of identification numbers issued by the U.S. Environmental Protection Agency. *(Solid Waste Management Division; 329 IAC 3.1-1-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-14 Fees (Repealed)

Sec. 14. *(Repealed by Solid Waste Management Division; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099)*

329 IAC 3.1-1-14.1 Fees

Authority: IC 13-14-8; IC 13-22
Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 14.1. (a) The following definitions apply throughout this section:
(1) "Boilers and industrial furnaces" or "BIFs" means facilities as defined under "boilers" and "industrial furnaces" in 40 CFR 260.10.
(2) "Class 2 modification" refers to the modification classification system described under 40 CFR 270.42.
(3) "Class 3 modification" refers to the modification classification system described under 40 CFR 270.42.
(4) "Generator" or "LQG" means a person that:
(A) during the preceding calendar year:
(i) generated in any calendar month more than one thousand (1,000) kilograms of hazardous waste or more than one (1) kilogram of acute hazardous waste;
(ii) regardless of a person's rate of generation, accumulated at any time more than one (1) kilogram of acute hazardous waste; or
(iii) regardless of a person's rate of generation, accumulated at any time more than six thousand (6,000)

kilograms of hazardous waste; or

(B) generated or accumulated in any calendar month more than one hundred (100) kilograms of spill clean-up material contaminated with acute hazardous waste.

(5) "Ground water monitoring well" means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.

(6) "Land disposal" includes interim status and permitted hazardous waste landfills and interim status and permitted hazardous waste surface impoundments.

(7) "Operation" or "operating", for the purpose of this section, means the following:

(A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste is present in the unit as of January 1.

(B) A disposal unit that will close leaving waste in place is considered operating until the unit has permanently stopped receiving waste as of January 1.

(8) "Storage" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste storage.

(9) "Treatment" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under 40 CFR 262.34, 40 CFR 261.4, and 40 CFR 261.6.

(10) "Treatment storage disposal" or "TSD" means the term as defined in 40 CFR 260.10.

(b) In accordance with IC 13-22-12-2, hazardous waste fees are as follows:

(1) New permit application fees are as follows:

(A) Land disposal:

$40,600

(B) Incinerator (per unit):

$21,700

(C) Storage:

$23,800

(D) Treatment (including boilers and industrial furnaces):

$23,800

(2) Permit renewal and Class 3 modification fees are as follows:

(A) Land disposal:

$34,000

(B) Incinerator (per unit):

$21,700

(C) Storage:

$17,200

(D) Treatment (including boilers and industrial furnaces):

$17,200

(3) Class 2 modification fee:

$2,250

(4) Annual operation fees are as follows:

(A) Land disposal:

$37,500

(B) Incinerator (per unit):

$10,000

(C) Storage:

$2,500

(D) Treatment (including boilers and industrial furnaces):

$10,000

(E) Generator:

$1,565

(F) Post-closure activity:

$1,500

(G) Ground water compliance sampling at active facilities (per well):

$1,000

(c) Requirements for application fees are as follows:

(1) The fees must be submitted with the hazardous waste permit application. Hazardous waste permit applications will be denied without the application fee.

(2) The fees are not refundable once staff review of the application has commenced.

(d) The annual operation fee schedule is established in IC 13-22-12 and applies to the following:

(1) Annual operation fees established in IC 13-22-12-3 apply to facilities listed in subsection (b) that:

(A) operate with a permit;

(B) operate under interim status;

(C) are a large quantity generator (LQG); or

(D) otherwise manage hazardous waste subject to regulation under IC 13-22-2.

(2) Hazardous waste annual operation fees begin accruing January 1 of each year. The commissioner shall assess hazardous waste annual operation fees not later than January 15 for the current year's activities. However, this is based on a generator's previous year's activities as defined by the generator.

(3) Hazardous waste management facilities permitted as of January 1 of the assessed year must pay annual operations fees, even if not yet constructed or receiving waste.

(4) No waivers exist for large quantity generators (LQGs).

(5) Permitted TSDs that choose not to manage hazardous waste will be assessed a fee. Fees are assessed for facilities that have the ability to manage hazardous waste.

(6) Permitted treatment and storage facilities that close by removing all waste will not be assessed a post-closure fee because the facility is no longer regulated.

(7) Facilities that are issued a post-closure permit will be assessed the post-closure fee. Landfills will be assessed the fee for the duration of the post-closure period.

(8) A person shall remit a hazardous waste annual operation fee or an installment allowed by subsection (e) to the commissioner:

(A) no more than thirty (30) days after the date the fee is assessed; or

(B) by the date the installment is due.

(9) A person or facility that is described in more than one (1) category under this section shall pay all applicable fees.

(e) Installment payments are established as follows:

(1) The commissioner shall allow a person to remit installments on the annual fee if:

(A) the person determines that a single payment of the entire fee is an undue hardship; and

(B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.

(2) Installments are due on a:

(A) quarterly basis:

(i) February 15;

(ii) May 15;

(iii) August 15; and

(iv) November 15; or

(B) semiannual basis:

(i) February 15; and

(ii) August 15.

(3) The commissioner will not send a notice of the installment method to the person who notifies in subdivision (1)(B).

(f) In addition to the penalties described under IC 13-30-4, the following will occur:

(1) If a person does not remit a hazardous waste annual operation fee or an installment established under subsection (e)(2)

within:

(A) sixty (60) days after the date the fee is assessed; or

(B) thirty (30) days after the date the installment is due;

the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable.

(2) The delinquency charge is due and payable:

(A) sixty (60) days after the date the hazardous waste annual operation fee is assessed; or

(B) thirty (30) days after the date the installment is due.

(3) If a person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge within:

(A) ninety (90) days after the date the hazardous waste annual operation fee is assessed; or

(B) sixty (60) days after the date the installment is due;

the commissioner may revoke the person's permit.

(4) Before revoking a person's permit under subdivision (3), the commissioner shall send a written notice by certified mail that:

(A) describes what fees and delinquency charge are due; and

(B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.

(g) The fees and delinquency charges collected under this section must be:

(1) payable to the department; and

(2) deposited in the environmental management permit operation fund established under IC 13-15-11-3.

(Solid Waste Management Division; 329 IAC 3.1-1-14.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)

Rule 2. Requests for Information

329 IAC 3.1-2-1 Purpose; scope; applicability

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-14-11

Sec. 1. This rule establishes the procedures that the commissioner will use in making IDEM hazardous waste records available to the public and sets forth the procedures the public must follow to request information. For purposes of this rule, the definitions in 329 IAC 6.1-2 apply. *(Solid Waste Management Division; 329 IAC 3.1-2-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; filed Nov 4, 1999, 10:19 a.m.: 23 IR 556; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-2 Disclosure of IDEM hazardous waste records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 5-14-3

Sec. 2. (a) The IDEM will make the fullest possible disclosure of records to the public, consistent with the following:

(1) The rights of individuals to privacy.

(2) The rights of persons in business to have certain information entitled to confidential treatment.

(3) The need for the IDEM to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

(b) All IDEM hazardous waste records shall be available to the public unless they are exempt from disclosure under IC 5-14-3, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.

(c) All nonexempt IDEM records shall be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor. *(Solid Waste Management Division; 329 IAC 3.1-2-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed*

Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-2-3 Partial disclosure of hazardous waste records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 3. If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted. *(Solid Waste Management Division; 329 IAC 3.1-2-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-4 Requests to which this rule applies

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-22

Sec. 4. (a) This rule applies to any written request for records related to IC 13-22 or this article (other than a request made by a federal or another state agency) received by any IDEM office, whether or not the request cites any particular legal authority.

(b) Any written request to the IDEM for existing records prepared by the IDEM for routine public distribution, for example, pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under section 11 of this rule is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

(c) This rule replaces the provisions of 329 IAC 6 for purposes of hazardous waste records filed or maintained in accordance with IC 13-22 or this article. *(Solid Waste Management Division; 329 IAC 3.1-2-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-5 Existing records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 5. (a) This rule does not require the creation of new records in response to a request, nor does it require the IDEM to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. This rule establishes requirements for disclosure of existing records.

(b) All existing IDEM records are subject to routine destruction according to standard record retention schedules. *(Solid Waste Management Division; 329 IAC 3.1-2-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-6 Agency records; filing request

Authority: IC 13-14-8; IC 13-19-3-1
Affected: IC 13-14-8

Sec. 6. A request for hazardous waste records shall be filed with the Hazardous Waste Records Officer, Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Solid Waste Management Division; 329 IAC 3.1-2-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-7 Misdirected written requests; oral requests

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 7. (a) The IDEM cannot assure that a timely or satisfactory response under this rule will be given to written requests

that are addressed other than to the hazardous waste records officer. Any IDEM officer or employee who receives a written request for information or disclosure of IDEM records shall promptly forward a copy of the request to the hazardous waste records officer, by the fastest practicable means, and shall, if appropriate, commence action under section 11 of this rule. For purposes of section 12 of this rule, the time allowed with respect to initial determinations shall be computed from the day on which the hazardous waste records officer receives the request.

(b) While IDEM officers and employees will attempt in good faith to comply with requests for inspection or disclosure of IDEM records made orally, by telephone, or otherwise, such oral requests are not required to be processed in accordance with this rule. *(Solid Waste Management Division; 329 IAC 3.1-2-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-8 Form of request

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 8. A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, and should be addressed to the address set forth in section 6 of this rule, but otherwise need not be in any particular form. *(Solid Waste Management Division; 329 IAC 3.1-2-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-9 Requests which do not reasonably describe records sought

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 9. (a) If the description of the records sought in the request is not sufficient to allow the IDEM to identify and locate the requested records, the commissioner, taking action under section 11 of this rule, will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) The IDEM will make every reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his request. If a request is described in general terms, for example, all records having to do with a certain area, the commissioner taking action under section 11 of this rule may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requestor. *(Solid Waste Management Division; 329 IAC 3.1-2-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-10 Responsibilities of the commissioner

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 10. (a) Upon receipt of a written request, the commissioner shall mark the request with the date of receipt and the date by which response is due. The commissioner shall retain a file copy of the request and shall monitor the handling of the request to ensure a timely response.

(b) The commissioner shall maintain a file concerning each request, which shall contain a copy of the request, initial and appeal determinations, and other pertinent correspondence and records.

(c) The commissioner shall collect and maintain the information necessary to compile the reports required by this rule. *(Solid Waste Management Division; 329 IAC 3.1-2-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-11 Action by the commissioner

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 11. (a) Whenever the commissioner becomes aware that she is responsible for responding to a request, the commissioner shall do the following:

(1) Take action under section 9 of this rule, if required, to obtain a better description of the records requested.

(2) Locate the records as promptly as possible or determine that the records are not known to exist.

(3) When appropriate, take action to obtain payment or assurance of payment.

(4) If any located records contain "business information", as defined in 329 IAC 3.1-4, comply with 329 IAC 6.1.

(5) Determine which of the requested records legally must be withheld, and why.

(b) The commissioner shall issue all initial determinations within the allowed period (see section 12 of this rule), specifying (individually or by category) which records will be disclosed and which will be withheld. Denials of requests shall comply with section 13 of this rule.

(c) In determining which records are responsive to a request, the commissioner shall ordinarily include those records within the possession of the IDEM as of the date of the receipt of the request by the IDEM. *(Solid Waste Management Division; 329 IAC 3.1-2-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-12 Time allowed for issuance of initial determination

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-14-11

Sec. 12. (a) Except as otherwise provided in this section, not later than the seventh working day after the date of receipt by the commissioner of a request for records, the commissioner shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in the possession of the IDEM, the commissioner shall so inform the requestor.

(b) The period of seven (7) working days shall be measured from the date the request is first received and logged in by the commissioner.

(c) There shall be excluded from the period of seven (7) working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the IDEM under section 9 of this rule that his request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There shall be excluded from the period of seven (7) working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the IDEM under IC 13-14-11 that prepayment of fees is required and the date that the requestor pays such charges.

(e) The commissioner may extend the basic seven (7) day period established under subsection (a) by a period not to exceed ten (10) additional working days, by furnishing written notice to the requestor within the basic seven (7) day period stating the reasons for such extension and the date by which the commissioner expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one (1) or more of the following unusual circumstances require the extension:

(1) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two (2) or more offices of the IDEM.

(f) Failure of the commissioner to issue a determination within the seven (7) day period or any authorized extension shall constitute final agency action which authorizes the requestor to commence an action in the appropriate court to obtain the records. *(Solid Waste Management Division; 329 IAC 3.1-2-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-13 Initial denials of requests

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 4-21.5-3-7; IC 5-14-3-4; IC 5-14-3-9; IC 13-14-11; IC 13-22-7-1

Sec. 13. (a) An initial denial of a request may be issued only for the following reasons:

(1) A statutory provision, provisions of this article, or court order requiring that the information not be disclosed.

(2) The record is exempt from mandatory disclosure under IC 5-14-3-4, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.

(3) 329 IAC 6.1 requires initial denial because a third person must be consulted in connection with a business confidentiality claim.

(b) Each initial determination to deny a request shall:

(1) be written, signed, and dated;

(2) identify the records that are being withheld; and

(3) state the basis for denial of each record being withheld.

However, no initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information, or a confidential investigation. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of IC 5-14-3-4, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.

(c) Each initial determination which denies, in whole or in part, a request for one (1) or more existing, located IDEM records shall state that the requestor may appeal the initial denial by filing a written appeal with the technical secretary of the SWMB in accordance with IC 4-21.5-3-7. Alternatively, the requestor may appeal the initial denial to court, under IC 5-14-3-9.

(d) A determination shall be deemed issued on the date the determination letter is placed in the IDEM mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date occurs first. *(Solid Waste Management Division; 329 IAC 3.1-2-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-14 Appeal determinations; by whom made

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 14. The SWMB shall make one (1) of the following determinations in connection with every appeal from the initial denial of a request for an existing, located record:

(1) The record must be disclosed.

(2) The record must not be disclosed, because a statute or a provision of this rule or 329 IAC 6.1 so requires.

(Solid Waste Management Division; 329 IAC 3.1-2-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-2-15 Time allowed for issuance of appeal determination

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 4-21.5-3-27; IC 4-21.5-3-29; IC 5-14-3-9

Sec. 15. (a) The SWMB shall issue its written determination consistent with the time frames set forth in IC 4-21.5-3-27 and IC 4-21.5-3-29.

(b) Failure of the SWMB to make a written determination of an appeal within the time period described in IC 4-21.5-3-29 constitutes final agency action, giving the requestor the right to judicial review under IC 5-14-3-9(d). *(Solid Waste Management Division; 329 IAC 3.1-2-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-2-16 Reduction or waiver of fee

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 16. The fee chargeable for an IDEM hazardous waste record shall be reduced or waived by the IDEM if the commissioner determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees shall be considered (but need not necessarily be granted) in connection with each request from a representative of the press or other communications medium, or from a public interest group. A request for reduction or waiver of fees shall be addressed to the hazardous waste records officer. The commissioner shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. This initial determination may be appealed by letter addressed to the technical secretary of the SWMB. The SWMB shall decide such appeals. *(Solid Waste Management Division; 329 IAC 3.1-2-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 3. Confidentiality of Business Information

329 IAC 3.1-3-1 Applicability

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-14-11

Sec. 1. This rule is replaced with the provisions of 329 IAC 6.1 for the purpose of confidential hazardous waste information. *(Solid Waste Management Division; 329 IAC 3.1-3-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 915; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-3-2 Applicability (Repealed)

Sec. 2. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-3 Notice to be included in IDEM requests, demands, and forms; method of asserting business confidentiality claim; effect of failure to assert claim at time of submission (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-4 Initial action by commissioner; confidentiality determination; notice to affected businesses; opportunity to comment (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-5 Final confidentiality determination by the SWMB; role of SWMB; comment period; treatment of comments; matters to be considered; actions by commissioner; emergency situations (Repealed)

Sec. 5. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-6 Confidentiality determinations; substantive criteria (Repealed)

Sec. 6. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-7 Safeguarding of business information; penalty for wrongful disclosure; confidentiality agreements (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-8 Notification; affected businesses (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-9 Confidentiality agreements (Repealed)

Sec. 9. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

Rule 4. Definitions

329 IAC 3.1-4-1 Applicability

Authority: IC 13-14-8; IC 13-19-3-1
Affected: IC 13-14-8; IC 13-11-2; 40 CFR 260 through 40 CFR 270

Sec. 1. (a) In addition to the definitions contained in IC 13-11-2 and in this rule, the definitions contained in 40 CFR 260 through 40 CFR 270 are hereby adopted and incorporated by reference and made applicable to this article, except as provided otherwise in subsection (b).

(b) The following are exceptions to federal definitions:

(1) Delete the definitions of "existing tank system" or "existing component" in 40 CFR 260.10 and substitute the definition under section 11 of this rule.

(2) Delete the definitions of "new tank system" or "new tank component" in 40 CFR 260.10 and substitute the definition under section 18 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-4-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 920; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3354; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)

329 IAC 3.1-4-2 "Affected business" defined (Repealed)

Sec. 2. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-3 "Authorized person" defined (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-4 "Available to the public" defined (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-5 "Board" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-17; IC 13-13-8

Sec. 5. "Board", as used in this article, means the environmental rules board. *(Solid Waste Management Division; 329 IAC 3.1-4-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-4-6 "Business" defined
Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 6. "Business" means any person engaged in a business, trade, employment, calling, or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure (or may lawfully inure) to the benefit of any private shareholder or individual. *(Solid Waste Management Division; 329 IAC 3.1-4-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-7 "Business confidentiality claim" defined (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-8 "Business information" defined (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-9 "Commissioner" defined
Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 9. "Commissioner" means the commissioner of the Indiana department of environmental management. *(Solid Waste Management Division; 329 IAC 3.1-4-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-9.1 "Electric lamp" defined (Repealed)

Sec. 9.1. *(Repealed by Solid Waste Management Division; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3114)*

329 IAC 3.1-4-9.5 "Electronic format" defined
Authority: IC 13-14-7; IC 13-22-2-4
Affected: IC 13-22-4; 40 CFR 262.21

Sec. 9.5. "Electronic format" means information submitted by computer diskette, electronic mailbox, or other electronic means as approved by the commissioner. *(Solid Waste Management Division; 329 IAC 3.1-4-9.5; filed Jun 27, 1997, 4:16 p.m.: 20 IR 3012; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-10 "EPA" defined
Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 10. "EPA" means the U.S. Environmental Protection Agency. *(Solid Waste Management Division; 329 IAC 3.1-4-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-11 "Existing tank system" or "existing component" defined
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2

Sec. 11. "Existing tank system" or "existing component" means a tank system or component that is used for the storage or

treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to June 20, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(1) a continuous on-site physical construction or installation program has begun; or

(2) the owner or operator has entered into contractual obligations that cannot be canceled or modified without substantial loss for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(Solid Waste Management Division; 329 IAC 3.1-4-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3354; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-12 "Final (state) permit application" or "final permit application" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 5-14-3-2; IC 13-22-2

Sec. 12. "Final (state) permit application" or "final permit application" means the permit application required by 329 IAC 3.1-13. The application is equivalent to the Part B permit application as specified in 40 CFR 270. *(Solid Waste Management Division; 329 IAC 3.1-4-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-13 "Hazardous waste records officer" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 13. "Hazardous waste records officer" means the individual designated by the commissioner to whom all requests for information under this rule shall be directed. *(Solid Waste Management Division; 329 IAC 3.1-4-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-14 "IDEM" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 14. "IDEM" means the Indiana department of environmental management. *(Solid Waste Management Division; 329 IAC 3.1-4-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-15 "IDEM hazardous waste record" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2; IC 13-22

Sec. 15. "IDEM hazardous waste record" or "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by the IDEM related to IC 13-22 or this article. The term includes informal writings (such as drafts) and information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents which were created or acquired by the IDEM, its predecessors, its officers, and its employees by the use of government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an IDEM officer or employee in his or her purely personal capacity. This definition is intended to supplement the definition of "public record" in IC 5-14-3-2 and in no way restrict its coverage. *(Solid Waste Management Division; 329 IAC 3.1-4-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-16 "Interim status" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 5-14-3-2; IC 13-22-2

Sec. 16. "Interim status" means that interim period during which an existing hazardous waste management facility shall be treated as having been issued a permit. Interim status begins when an existing facility first becomes subject to this article or 40 CFR 270.70. Interim status terminates upon final administrative disposition of its final (state) permit pursuant to 329 IAC 3.1-13 or closure pursuant to 329 IAC 3.1-10. *(Solid Waste Management Division; 329 IAC 3.1-4-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-17 "Interim status standards" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 17. "Interim status standards" means, for existing facilities, those requirements under 329 IAC 3.1-10. *(Solid Waste Management Division; 329 IAC 3.1-4-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-17.1 "Mercury-containing lamp" defined (Repealed)

Sec. 17.1. *(Repealed by Solid Waste Management Division; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3114)*

329 IAC 3.1-4-18 "New tank system" or "new tank component" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 18. "New tank system" or "new tank component" means a tank system or component that will be used for storage or treatment of hazardous waste and for which installation commenced after June 20, 1988; however, for purposes of 40 CFR 264.193(g)(2) and 40 CFR 265.193(g)(2), a new tank system is one for which construction commenced after June 20, 1988. *(Solid Waste Management Division; 329 IAC 3.1-4-18; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-19 "Part A", "Part A permit", or "Part A permit application" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 5-14-3-2; IC 13-22-2

Sec. 19. "Part A", "Part A permit", or "Part A permit application" means the EPA Forms 3510-1 and 3510-3 which are submitted under 329 IAC 3.1-13. These forms are available from the IDEM. *(Solid Waste Management Division; 329 IAC 3.1-4-19; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-20 "Person" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 20. "Person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including federal, state, or local governmental bodies and agencies and their employees. *(Solid Waste Management Division; 329 IAC 3.1-4-20; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-20.2 "Processed scrap metal" defined

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

Sec. 20.2. (a) "Processed scrap metal" means scrap metal that has been manually or physically altered to either separate by types of distinct material to enhance economic value or to improve the handling of materials.

(b) Processed scrap metal includes, but is not limited to, scrap metal that has been:

(1) baled;
(2) shredded;
(3) sheared;
(4) chopped;
(5) crushed;
(6) flattened;
(7) cut;
(8) melted or separated and sorted by metal type; or
(9) fines, drosses, and related materials that have been agglomerated.

(Solid Waste Management Division; 329 IAC 3.1-4-20.2; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-21 "Reasons of business confidentiality" defined (Repealed)

Sec. 21. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-21.1 "Reclamation" defined

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

Sec. 21.1. (a) "Reclamation" means processing to recover or regenerate a distinct component of a secondary material.

(b) As used in this section, examples of "processing to recover" may include any of the following:

(1) Recovery of lead components from spent lead acid batteries.
(2) Recovery of metals from sludges, spent materials, or other metal bearing waste.
(3) Recovery of mercury from mercury-containing lamps or other devices.

(c) As used in this section, examples of "regenerate" may include any of the following:

(1) Distillation of spent solvent for reuse of the solvent.
(2) Regeneration of spent acids for reuse of the acids.
(3) Regeneration of spent carbons for reuse of the carbons.

(Solid Waste Management Division; 329 IAC 3.1-4-21.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-22 "Recorded" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 22. "Recorded" means written or otherwise registered in some form for preserving information, including such forms as drawings, photographs, video tape, sound recordings, punched cards, and computer tape or disk. *(Solid Waste Management Division; 329 IAC 3.1-4-22; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-23 "Requestor" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 23. "Requestor" means any person who has submitted a request to IDEM. *(Solid Waste Management Division; 329 IAC 3.1-4-23; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-23.3 "Secondary material" defined

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

Sec. 23.3. "Secondary material" means a solid, liquid, or contained gaseous form of a byproduct, spent material, sludge, discarded commercial chemical product, or scrap metal that may be incorporated into a manufacturing or an industrial process, except reclamation, to make a product. *(Solid Waste Management Division; 329 IAC 3.1-4-23.3; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-24 "SWMB" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 24. "SWMB" means the solid waste management board. *(Solid Waste Management Division; 329 IAC 3.1-4-24; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-25 "Used oil" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2

Sec. 25. "Used oil" means a petroleum based or synthetic oil that has been used. The term includes oil that has been used for one (1) or more of the following purposes:

(1) Lubricant for engines, turbines, or gears.
(2) Hydraulic fluid, including transmission fluid.
(3) Metal working fluid, including cutting, grinding, machining, rolling, stamping, quenching, and coating oil.
(4) Insulating fluid or coolants.

(Solid Waste Management Division; 329 IAC 3.1-4-25; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-25.1 "Utilize" defined

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

Sec. 25.1. "Utilize" means to legitimately incorporate a secondary material into an industrial or manufacturing process to make a usable product without intervening reclamation or recovery, and includes any necessary transportation directly between the generator and user or storage by the generator or user of the secondary material, but which must occur without speculative accumulation as defined in "accumulating speculatively", defined in 40 CFR 261.1(a)(8), or in a manner that constitutes disposal. *(Solid Waste Management Division; 329 IAC 3.1-4-25.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-26 "Voluntarily submitted information" defined (Repealed)

Sec. 26. *(Repealed by Solid Waste Management Division; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

Rule 5. Rulemaking Petitions, Exemptions, and Additional Federal Procedures

329 IAC 3.1-5-1 Purpose; scope; applicability

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 4-21.5

Sec. 1. (a) This rule establishes standards, criteria, and procedures for the following:

(1) General rulemaking petitions.
(2) Petitions for equivalent testing or analytical methods.
(3) Petitions to exclude a waste produced at a particular facility.
(4) Exemptions to be classified as solid waste.
(5) Exemptions to be classified as a boiler.
(6) Additional regulation of certain hazardous waste recycling activities.
(7) Exemptions from land disposal restrictions.
(8) Notification and legitimate recycling of secondary hazardous materials.

(b) Final decisions of the commissioner made pursuant to this rule are subject to the notice requirements and procedures prescribed under IC 4-21.5. *(Solid Waste Management Division; 329 IAC 3.1-5-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-5-2 Petitions for delisting; petitions for equivalent testing or analytical methods

Authority: IC 13-14-1; IC 13-14-8; IC 13-22-2-3; IC 13-22-2-4
Affected: IC 13-14-8-5; IC 13-14-9; 40 CFR 260.20; 40 CFR 260.21

Sec. 2. (a) Any person may petition the commissioner to exclude a waste or waste derived material at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the general petition requirements in this section, a petition must include the additional requirements of section 3 of this rule.

(b) Each petition must be submitted to the commissioner by certified mail and must include:

(1) the petitioner's name and address;
(2) a statement of the petitioner's interest in the proposed action;
(3) a description of the proposed action, including suggested rule language where appropriate; and
(4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The commissioner will make a tentative recommendation for rulemaking to grant or deny a petition and will publish notice of such tentative recommendation in the Indiana Register for written public comment as provided in IC 13-14-9.

(d) Upon the written request of any interested person, the commissioner may hold an informal public hearing to consider oral comments on the tentative decision. 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. The commissioner may in any case decide to hold an informal public hearing.

(e) After evaluating all public comments, the commissioner will publish notice of the recommendation for rulemaking to grant or deny the petition in the Indiana Register as provided in IC 13-14-9.

(f) As provided in IC 13-14-8-5, any person may present a proposal to exclude a waste at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the requirements of IC 13-14-8-5, a proposal must include the additional requirements of section 3 of this rule.

(g) Where the administrator of the EPA has:

(1) excluded a waste at a particular facility from regulation under 40 CFR 260 through 40 CFR 273; and
(2) described that waste and the conditions under which that waste is excluded in 40 CFR 261, Appendix IX;

that waste is no longer a hazardous waste as long as the conditions for exclusion of the waste described in 40 CFR 261, Appendix

IX are met.

(h) Where the administrator of the EPA has granted a general rulemaking petition or a petition for equivalent testing or analytical method pursuant to 40 CFR 260.20 and 40 CFR 260.21, the board may, at its discretion, accept such determination and amend this article accordingly provided that the petitioner can furnish appropriate evidence of the administrator's actions and the board determines that granting such a petition is consistent with policies outlined in IC 13-14. *(Solid Waste Management Division; 329 IAC 3.1-5-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2740, eff Jul 1, 1999; errata filed May 11, 1998, 2:10 p.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA)*

329 IAC 3.1-5-3 Waste produced at a particular facility; petition to exclude

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 13-22-2-3; 40 CFR 260.22

Sec. 3. 40 CFR 260.22 is incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-5-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741, eff Jul 1, 1999; errata filed May 11, 1998, 2:10 p.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-5-4 Exemption from classification as a solid waste or to be classified as a boiler; adoption of federal procedures

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 260.30 through 40 CFR 260.41

Sec. 4. (a) The standards, criteria, and procedures for granting exemptions from classification as a solid waste or to be classified as a boiler contained in 40 CFR 260.30 through 40 CFR 260.33 are hereby adopted and incorporated by reference and made applicable to this article.

(b) In 40 CFR 260.33(a), delete the words "in the region where the recycler is located". *(Solid Waste Management Division; 329 IAC 3.1-5-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-5-5 Additional regulation of certain hazardous waste recycling activities; adoption of federal procedures

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 4-21.5-3-5; 40 CFR 260.40; 40 CFR 260.41

Sec. 5. The standards, criteria, and procedures for the case-by-case regulation of certain hazardous waste recycling activities contained in 40 CFR 260.40 through 40 CFR 260.41 are hereby adopted and incorporated by reference and made applicable to this article. *(Solid Waste Management Division; 329 IAC 3.1-5-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-5-6 Exemptions from land disposal restrictions

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 13-11-2-71; 40 CFR 268

Sec. 6. (a) Any person applying to the administrator of the EPA for an exemption from land disposal restrictions described in 329 IAC 3.1-12-2 must submit copies of such request and all supporting documents to the commissioner.

(b) A person who obtains an exemption from the administrator must apply to the commissioner for concurrence that such an exemption is consistent with the policies outlined in environmental management laws as defined at IC 13-11-2-71. *(Solid Waste Management Division; 329 IAC 3.1-5-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-5-7 Notification and legitimate recycling of hazardous secondary materials; adoption of federal procedures

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-22-2-21; IC 13-22-2

Sec. 7. (a) The notification and legitimate recycling requirements for hazardous secondary materials contained in 40 CFR 260.42* and 40 CFR 260.43* are incorporated by reference, with substitutions noted in subsection (b).

(b) Delete "EPA Form 8700-12" and insert "forms provided by the commissioner" in:

(1) 40 CFR 260.42(a);

(2) 40 CFR 260.42(a)(9);

(3) 40 CFR 260.42(b); and

(4) 40 CFR 260.43(a)(4)(iii).

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204. *(Solid Waste Management Division; 329 IAC 3.1-5-7; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

Rule 6. Identification and Listing of Hazardous Waste

329 IAC 3.1-6-1 Adoption of federal identification and listing of hazardous waste (40 CFR 261)

Authority: IC 13-7-7; IC 13-7-8.5
Affected: 40 CFR 261

Sec. 1. (a) This rule identifies those solid wastes which are subject to regulation as hazardous waste under this article and which are subject to the notification requirements of 329 IAC 3.1-1.

(b) Except as provided otherwise in section 2 of this rule, 40 CFR 261 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-6-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2062; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3

Sec. 2. The following are exceptions, additions, and substitutions to the identification and listing of hazardous waste under 40 CFR 261:

(1) A material that is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:

(A) in the case of IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) an emergency order is issued under IC 13-14-10-1.

(2) Delete 40 CFR 261.2(f) and substitute with "Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so."

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11* means the board.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2)*, owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77*.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.
(6) In 40 CFR 261.4(e)(3)(iii)*, delete the words "in the Region where the sample is collected".
(7) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).
(8) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.
(9) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.
(10) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.
(11) In addition to the requirements at 40 CFR 261.2(e)(1)(i) for the use or reuse of secondary materials to make products, section 5 of this rule also applies.
(12) In addition to the solid wastes excluded in 40 CFR 261.4(b)*, electronic waste or e-waste is excluded, which is any of the following or has the following component:
(A) A circuit board, including a shredded circuit board.
(B) A diode.
(C) A cathode ray tube.
(D) A computer.
(E) An electronic device.
E-waste does not include vehicles, as defined by IC 13-11-2-245, or white goods, as defined by IC 13-11-2-266. Electronic waste is regulated under 329 IAC 16 and must comply with all applicable standards and requirements under 329 IAC 16.
(13) At 40 CFR 261.4(a)(26)(i)* and 40 CFR 261.4(b)(18)(i)*, delete the phrase "Excluded Solvent-Contaminated Wipes" and substitute the phrase "'Excluded Solvent-Contaminated Wipes' or other words indicating the contents of the container".
(14) Delete 40 CFR 261.4(b)(4)(ii).

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204. *(Solid Waste Management Division; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA; filed Jun 3, 2015, 1:21 p.m.: 20150701-IR-329140288FRA; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 3. (a) In addition to the lists of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are acute hazardous wastes:
(1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).
(2) GB (Isopropyl methyl phosphonoflouridate).
(3) H, HD (Bis(2-chloroethyl) sulfide).
(4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).
(5) L (Dichloro(2-chlorovinyl)arsine).
(6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).
The chemical munitions in subdivisions (1) through (6) have the Indiana hazardous waste number I001 and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection (b).

(b) A generator may accumulate as much as fifty-five (55) gallons of waste derived from a waste listed in subsection (a)(6) at or near any point of generation where wastes initially accumulate, when that waste is managed in accordance with all other

requirements of 40 CFR 262.34(c)(1). *(Solid Waste Management Division; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)*

329 IAC 3.1-6-4 Exclusions

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

Sec. 4. (a) In addition to the exclusions incorporated by reference in this rule, the following materials being recycled are excluded from regulation under this article:

(1) Processed scrap metal from processing containers, tanks, and equipment that:

(A) contained hazardous waste; and

(B) meets the requirements of subsection (b) prior to shipment from the processing facility.

(2) Processed scrap metal that consists of fines, drosses and related materials that is stored in containers sufficient to prevent a release to the environment prior to recovery.

(3) Other scrap metal that is not addressed in the processed scrap metal provisions in subdivisions (1) and (2).

(4) Shredded circuit boards provided that:

(A) storage is in containers sufficient to prevent a release to the environment prior to recovery; and

(B) shredded circuit boards that are free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries.

(b) Scrap metal contaminated with hazardous waste residues must be cleaned to be free of all adhering hazardous waste residues, which are in a form, that could be released to the environment due to dripping or exposure to precipitation. The surface must also be free of hazardous waste residues that can be easily removed by rinsing with a suitable solvent or other commonly employed means of cleaning. Paint or other metal finishes are not considered hazardous waste residues for purposes of this exclusion. *(Solid Waste Management Division; 329 IAC 3.1-6-4; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1097; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-6-5 Secondary materials

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

Sec. 5. (a) A secondary material that causes no significant increase in the threat posed to human health or the environment as defined in subsection (e)(4) is not a solid waste if it:

(1) does not meet the definition of solid waste under 40 CFR 261.2(e); or

(2) is legitimately utilized as defined under 329 IAC 3.1-4-25.1 in an industrial process, except reclamation as defined under 329 IAC 3.1-4-21.1.

(b) A secondary material generated as a result of the utilization of a secondary material that does not qualify as an exempt secondary material is a solid waste and subject to a waste determination as to the waste's status as a hazardous waste as follows:

(1) This waste determination shall be conducted according to the requirements of 40 CFR 262.11.

(2) In the case of a secondary material that is listed under this rule, a solid waste generated from the utilization in accordance with this section does not retain the listing from which the secondary material is derived.

(c) There is no requirement for a permit under this article for the use of a secondary material as a manufacturing ingredient when used as a legitimate manufacturing ingredient in accordance with the requirements of this section.

(d) The commissioner shall:

(1) provide a written determination for recognition of the secondary material exemption upon request; and

(2) respond no later than ninety (90) days after the request is received.

(e) In making a determination on legitimate use of secondary materials, the following criteria shall be considered, when relevant, for determining legitimate use and exempt status:

(1) The secondary material must be utilized in the manufacturing process without intervening reclamation or recovery.

(2) Transportation must be directly between the generator of the secondary material and the user of the secondary material.
(3) The secondary material or the resultant product, or both, must not be accumulated speculatively as defined at 40 CFR 261.1(a)(8).
(4) The secondary material must be handled in a manner that poses no significant increase in the threat to human health or the environment beyond that posed by the use of the raw material being replaced. This may be demonstrated by showing the secondary material is handled in a manner that is:
(A) consistent with the raw materials being replaced; and
(B) guards against loss or release during storage.
(5) The manufacturing process cannot be a reclamation activity. In evaluating this factor, the commissioner will use the definition of reclamation in 329 IAC 3.1-4-21.1 to distinguish between reclamation and other manufacturing processes.
(6) The secondary material must be a legitimate ingredient necessary to the production process or product. This may be demonstrated by showing any of the following:
(A) The secondary material is effective in the manufacturing process.
(B) The secondary material is used under controlled conditions.
(C) The user documents and can show through records how, when, and in what volumes the secondary material is used.
(D) In two-party transactions, there is consideration, usually monetary, reflecting the value of the secondary material to the user.
(E) There are written specifications for the incoming material and the product.
(F) There is a program in place by which the user verifies that incoming materials meet established specifications.
(7) The person must demonstrate that there is a market for the product. This may be demonstrated by showing any of the following:
(A) Industry-recognized quality specifications for the product.
(B) Any recognitions of the product as a commodity.
(C) Contracts for purchase of the product or other agreements.
(f) The product cannot be burned for energy recovery or used in a manner constituting disposal unless the secondary material is a fuel or originally intended to be used in a manner involving placement on the land. *(Solid Waste Management Division; 329 IAC 3.1-6-5; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

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

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:
(1) Delisting levels for the waste excluded by this section are as follows:
(A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts

Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L

Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L
Zinc	280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ±0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those described in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report must include the results of each month's analysis required by subdivision (2) for the previous calendar year.

(5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the ground water monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

(A) Category B slag debris.

(B) Foundry sand.

(C) Petroleum contaminated soils.

(D) Fly ash.

(E) Conditioned fly ash.

(F) Coal ash.

(G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the ground water higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Ground Water

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with *[sic., within]* ten (10) days after first possessing or being made aware of that data.

(14) No more than sixty thousand (60,000) cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Division; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372; filed Jul 20, 2005, 1:00 p.m.: 28 IR 3553)

329 IAC 3.1-6-7 Waste excluded from regulation; General Motors Corporation, Fort Wayne Assembly Plant, Fort Wayne, Indiana (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed Sep 11, 2009, 2:39 p.m.: 20091007-IR-329080673FRA)*

329 IAC 3.1-6-8 Waste excluded from regulation; Alcoa Corporation, Warrick Operations, Newburgh, Indiana

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-22-2
Affected: IC 13-22

Sec. 8. Wastewater treatment sludge, hazardous waste code F019, that is generated by Alcoa Corporation (Alcoa) at the Warrick Operations, Newburgh, Indiana is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) No concentration of a constituent listed in Table 1 may exceed the delisting level for that constituent listed in Table 1. The delisting levels listed in Table 1 are the maximum concentration of that constituent measured in the extract of the wastewater treatment sludge using the extraction methods described in subdivision (2).

Table 1. Maximum Delisting Levels for Inorganic and Organic Constituents

Constituent	Chemical Abstract Service Registry Number	Delisting Level
Antimony	7440-36-0	0.390 mg/L[1]
Arsenic	7440-38-2	0.360 mg/L[1]
Barium	7440-39-3	100 mg/L[1, 3]
Beryllium	7440-41-7	0.790 mg/L[1]
Cadmium	7440-43-9	0.280 mg/L[1]
Chromium (trivalent)	7440-47-3	5.0 mg/L[1, 3]
Chromium (hexavalent)	18540-29-9	3,800 mg/kg[2]
Copper	7440-50-8	17,000 mg/L[1]
Cobalt	7440-48-4	42.5 mg/L[1]
Lead	7439-92-1	5.0 mg/L[1, 3]
Mercury	7439-97-6	0.150 mg/L[1]
Nickel	7440-02-0	53.3 mg/L[1]
Selenium	7782-49-2	1 mg/L[1, 3]
Silver	7440-22-4	5 mg/L[1, 3]
Thallium	7440-28-0	0.16 mg/L[1]
Tin	7440-31-5	430 mg/L[1]
Vanadium	7440-62-2	40 mg/L[1]
Zinc	7440-66-6	530 mg/L[1]

[1] mg/L means milligrams per liter.

[2] mg/kg means milligrams per kilogram.

[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.

(2) Except as provided in clauses (C) through (F), Alcoa shall obtain two (2) duplicate representative samples of the delisted waste each quarter and analyze them for the constituents listed in Table 1 as follows:

(A) Constituents must be extracted using the following:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP)*.

(ii) Method 1330A, Oily Waste Extraction Procedure*, if oil and grease levels exceed ten thousand (10,000) milligrams per kilogram.

(iii) Method 3060A, Alkaline Digestion for Hexavalent Chromium*.

(B) Constituents must be analyzed using the following:

(i) Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry* or Method 6020, Inductively

Coupled Plasma-Mass Spectrometry*.

(ii) Method 7470A, Mercury in Liquid Waste (Manual Cold-Vapor Technique)*.

(iii) Method 7196A, Hexavalent Chromium (Colorimetric)*.

(C) For constituents other than hexavalent chromium, if the relative percent difference between the two (2) samples is forty percent (40%) or less for the first four (4) quarters, then Alcoa may obtain and analyze one (1) representative sample of the delisted waste each following quarter. The relative percent difference (RPD) is calculated for each constituent and equals one hundred (100) times the absolute value of the difference between the results divided by the average of the results, as follows:

$$RPD = 100 [(|x1 - x2|) / \{(x1 + x2) / 2\}]$$

where x1 equals sample results and x2 equals duplicate results.

(D) If the level of hexavalent chromium in the sample or duplicate sample is less or equal to ten and zero-tenths (10.0) milligrams per kilogram during the first four (4) quarters, then Alcoa may obtain and analyze one (1) representative sample of the delisted waste for hexavalent chromium each following quarter.

(E) If the level of hexavalent chromium in the sample or duplicate sample is greater than ten and zero-tenths (10.0) milligrams per kilogram, then Alcoa must calculate the relative percent difference as described in clause (C). If the relative percent difference between the two (2) samples is forty percent (40%) or less during the first four (4) quarters, then Alcoa may obtain and analyze one (1) representative sample of the delisted waste for hexavalent chromium each following quarter.

(F) If duplicate results for any constituent exceed forty percent (40%) relative percent difference, Alcoa must continue to analyze duplicate samples for that constituent for an additional two (2) quarters beyond the initial four (4) quarters. If the results still exceed forty percent (40%) relative percent difference after the additional two (2) quarters, Alcoa must continue to analyze duplicate samples for that constituent until authorized by the department to analyze one (1) sample each quarter.

(G) If any sample result shows any constituent listed in Table 1 at or above fifty percent (50%) of the delisting level for that constituent, then Alcoa must analyze two (2) duplicate samples each quarter until authorized by the department to analyze one (1) sample each quarter.

(H) Nothing in this section prohibits Alcoa from requesting at any time that the solid waste management board modify this section to allow less frequent verification testing.

(3) If waste testing or other information available to Alcoa shows that any constituent in Table 1 has exceeded the delisting level for that constituent, or Alcoa makes changes in the Warrick Operations that cause hazardous constituents listed in Table 1 to exceed the delisting level for that constituent, Alcoa must do all of the following:

(A) Notify the department in writing within ten (10) days of first possessing or being made aware of such data.

(B) Demonstrate that the waste continues to meet all delisting levels in Table 1.

(C) Manage the waste as hazardous waste until Alcoa receives written approval from the commissioner to resume managing the waste under this exclusion.

(4) Alcoa must submit an annual report that summarizes the data obtained through quarterly verification testing required by subdivision (2) to the department by February 1 of the following year. The report must include the results of each required analysis for the previous calendar year.

(5) Alcoa must compile, summarize, and maintain records of operating conditions and analytical data. The records must be:

(A) maintained for a minimum of five (5) years; and

(B) made available for inspection by the department during normal working hours.

(6) All data required by this section must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The delisted waste must be disposed of in a:

(A) municipal solid waste landfill permitted under 329 IAC 10; or

(B) hazardous waste disposal facility permitted under this article.

(8) If, at any time after disposal of the delisted waste, Alcoa possesses or is otherwise made aware of any data, including, but not limited to, leachate data or ground water monitoring data, or any other data relevant to the delisted waste indicating that any constituent identified in Table 1 is at a level in the leachate that is higher than the specified delisting level, then

Alcoa must report such data in writing to the department within ten (10) days of first possessing or being made aware of that data.

(9) No more than five thousand two hundred fifty (5,250) short tons of delisted waste may be disposed of in any calendar year under this exclusion.

*Test methods referenced in this rule are found in 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. *(Solid Waste Management Division; 329 IAC 3.1-6-8; filed Apr 1, 2008, 10:11 a.m.: 20080430-IR-329070552FRA)*

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 (CAMU) 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 Division; 329 IAC 3.1-6-9; filed Aug 27, 2010, 11:29 a.m.: 20100922-IR-329090206FRA)*

Rule 7. Standards Applicable to Generators of Hazardous Waste

329 IAC 3.1-7-1 Adoption of federal standards applicable to generators of hazardous waste (40 CFR 262)

Authority: IC 13-7
Affected: 40 CFR 262

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 262 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-7-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; filed May 6, 1994, 5:00 p.m.: 17 IR 2063)*

329 IAC 3.1-7-2 Exceptions and additions; generator standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; IC 13-22-4-3.1

Sec. 2. Exceptions and additions to federal standards for generators are as follows:

(1) Delete 40 CFR 262.12(b) and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned.".

(2) In addition to the requirements of 40 CFR 262.40*, a generator shall keep the reports required by IC 13-22-4-3.1 on file for at least three (3) years after submission to the department.

(3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.

(4) In 40 CFR 262.42(a)(2)*, delete "in the Region in which the generator is located".

(5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.

(6) In 40 CFR 262.53* and 40 CFR 262.54*, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Room 1101, Indianapolis, Indiana 46204-2251.

(7) Exception reports required from primary exporters pursuant to 40 CFR 262.55* must be filed with the Regional Administrator of the EPA and the commissioner.

(8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.

(9) In 40 CFR 262.57(b)*, the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North

Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204. *(Solid Waste Management Division; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA, eff Sep 5, 2006; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-7-3 Manifest; general (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-4 Acquisition of manifests (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-5 Number of copies (Repealed)

Sec. 5. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-6 Use of the manifest (Repealed)

Sec. 6. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-7 Indiana hazardous waste manifest and instructions (EPA Form 8700-22 and EPA Form 8700-22A and instructions); general (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-8 Indiana hazardous waste manifest and instructions (EPA Form 8700-22 and EPA Form 8700-22A); generators (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-9 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); transporters (Repealed)

Sec. 9. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-10 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); owners and operators of treatment, storage, or disposal facilities (Repealed)

Sec. 10. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-11 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); additional requirements (Repealed)

Sec. 11. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-12 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); handling codes for treatment, storage, and disposal methods (Repealed)

Sec. 12. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-13 Indiana hazardous waste manifest (EPA Form 8700-22 and EPA Form 8700-22A) (Repealed)

Sec. 13. *(Repealed by Solid Waste Management Division; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)*

329 IAC 3.1-7-14 Biennial reporting

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 262.41

Sec. 14. (a) A generator who ships his hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit biennial reports as follows:

(1) On forms provided by the commissioner according to the instructions on the form.

(2) To the:

Department of Environmental Management
Office of Land Quality
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

(3) No later than March 1 of each even-numbered year.

(b) Any generator who treats, stores, recovers, or disposes of hazardous wastes on-site must submit a biennial report covering those hazardous wastes in accordance with the provisions of 329 IAC 3.1-9 through 329 IAC 3.1-11 and 329 IAC 3.1-13, and the instructions on the form.

(c) Reporting for exports of hazardous waste is not required on the biennial report form. A separate annual report requirement is set forth in section 16 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-7-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 933; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091)*

329 IAC 3.1-7-15 Additional reporting

Authority: IC 13-7
Affected: IC 13-22-7-1; 40 CFR 262.43

Sec. 15. The commissioner, as she deems necessary under IC 13-22-7-1, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 329 IAC 3.1-6. *(Solid Waste Management Division; 329 IAC 3.1-7-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046)*

329 IAC 3.1-7-16 Annual report for exporters

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 262.56

Sec. 16. (a) Primary exporters of hazardous waste shall file with the administrator and the commissioner, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter.

(2) The calendar year covered by the report.

(3) The name and site address of each consignee.

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number

from 329 IAC 3.1-6, the U.S. Department of Transportation hazard class, the name and EPA identification number (where applicable) for each transporter used, the total amount of waste shipped, and the number of shipments pursuant to each notification.

(5) Except for hazardous waste produced by exporters of greater than one hundred (100) kilograms but less than one thousand (1,000) kilograms in a calendar month, unless provided under section 14 of this rule, in even-numbered years:

(A) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(B) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.".

(b) Reports shall be sent to the following addresses:

(1) Office of International Activities (A-106), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

(2) Office of Land Quality, Indiana Department of Environmental Management, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Solid Waste Management Division; 329 IAC 3.1-7-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091)

Rule 7.5. Rejection of Hazardous Waste (Repealed)

(Repealed by Solid Waste Management Division; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA. eff Sep 5, 2006)

Rule 8. Standards Applicable to Transporters of Hazardous Waste (40 CFR 263)

329 IAC 3.1-8-1 Adoption of federal standards applicable to transporters of hazardous waste

Authority: IC 13-7
Affected: 40 CFR 263

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 263 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-8-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-8-2 Exceptions and additions; transporter standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 263

Sec. 2. Exceptions and additions to federal standards for transporters are as follows:

(1) All references to "EPA", "United States", and "administrator" are retained.

(2) All references to the manifest provisions in 40 CFR 262, Subpart B, mean the manifest provisions of 329 IAC 3.1-7.

(3) Delete 40 CFR 263.11(b) and substitute "A transporter who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned.".

(4) Delete 40 CFR 263.20(h).

(5) In 40 CFR 263.22(e), the period of retention referred to may also be extended by the commissioner.

(6) In addition to the notices and reports required by 40 CFR 263.30 in the event of discharges of hazardous waste during transportation, the transporter must also comply with the notice requirements of 327 IAC 2-6.1. These requirements are described in section 3 of this rule.

(7) In addition to the requirements for hazardous waste transfer facilities under 40 CFR 263.12, owners or operators of hazardous waste transfer facilities must also comply with section 4 of this rule as applicable.

(Solid Waste Management Division; 329 IAC 3.1-8-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; filed May 28, 1998, 5:01 p.m.: 21 IR 3814; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-8-3 Hazardous waste discharges; additional state requirements

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

Sec. 3. (a) Whenever a spill or release of hazardous waste occurs, the transporter of hazardous waste shall immediately communicate a spill report to the Indiana Department of Environmental Management, Office of Land Quality, Emergency Response Section, at (317) 233-7745 for out-of-state calls, or (888) 233-7745 for in-state calls (toll-free in Indiana).

(b) If applicable, whenever possible, the transporter of hazardous waste shall immediately notify the nearest downstream water user.

(c) The transporter of hazardous waste shall submit to the office of land quality reports on the spill deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1. *(Solid Waste Management Division; 329 IAC 3.1-8-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Nov 24, 1998, 3:03 p.m.: 22 IR 1074; 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 Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-8-4 Hazardous waste transfer facilities; additional state requirements

Authority: IC 13-14-1; IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2-4; 40 CFR 263.12

Sec. 4. (a) This section is applicable to owners or operators of hazardous waste transfer facilities as defined under 40 CFR 260.10 who perform one (1) or more of the following activities during the normal course of transportation subsequent to shipment from the generator and prior to arrival at the designated facility:

(1) Mix hazardous waste.
(2) Combine hazardous waste.
(3) Commingle hazardous waste.
(4) Bulk hazardous waste.
(5) Repackage hazardous waste, except in response to leaking containers or containers in poor condition.
(6) Pump hazardous waste from one (1) vehicle to another.
(7) Transfer hazardous waste (including containerized hazardous waste) from one (1) vehicle to another.
(8) Open hazardous waste containers for purposes other than for sampling.

(b) Owners or operators of existing hazardous waste transfer facilities who conduct the activities described in subsection (a) must submit written notification to the Indiana Department of Environmental Management, Office of Land Quality, Hazardous Waste Data Analysis Section, 100 North Senate Avenue, P.O. Box 7035, Indianapolis, Indiana 46207-7035, within thirty (30) days after the effective date of this section. Notification must include the following:

(1) Hazardous waste transfer facility:
    (A) name;
    (B) location and mailing address;
    (C) telephone number;
    (D) owner's name;
    (E) owner's mailing address;
    (F) owner's telephone number;
    (G) operator's name;
    (H) operator's mailing address; and
    (I) operator's telephone number.

(2) A description of the hazardous waste management activities as listed in subsection (a) that the owner or operator of the hazardous waste transfer facility conducts.

(c) Owners or operators of new hazardous waste transfer facilities who intend to conduct the activities described in subsection (a) must submit written notification to the Indiana Department of Environmental Management, Office of Land Quality, Hazardous Waste Data Analysis Section, 100 North Senate Avenue, P.O. Box 7035, Indianapolis, Indiana 46207-7035, at least thirty (30) days before the hazardous waste management activities described in subsection (a) begin. Notification must include the following:

(1) Hazardous waste transfer facility:

(A) name;
(B) location and mailing address;
(C) telephone number;
(D) owner's name;
(E) owner's mailing address;
(F) owner's telephone number;
(G) operator's name;
(H) operator's mailing address; and
(I) operator's telephone number.

(2) A description of the hazardous waste management activities as listed in subsection (a) that the owner or operator of the hazardous waste transfer facility intends to conduct.

(d) Owners or operators of all hazardous waste transfer facilities who conduct the activities described in subsection (a) must maintain and operate the hazardous waste transfer facilities to prevent hazardous waste and hazardous waste constituents from escaping:

(1) into the soil;
(2) directly or indirectly into surface or ground water; or
(3) into drains or sewers.

(e) This section is not applicable to household hazardous waste collection points. *(Solid Waste Management Division; 329 IAC 3.1-8-4; filed May 28, 1998, 5:01 p.m.: 21 IR 3814; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 9. Final Permit Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-9-1 Adoption of federal standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR 264)

Authority: IC 13-7-7; IC 13-7-8.5
Affected: 40 CFR 264

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 264 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-9-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

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 13-22-4-3.1; 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	0.010
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).

(Solid Waste Management Division; 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; filed Dec 26, 2007, 1:44 p.m.: 20080123-IR-329060556FRA)

329 IAC 3.1-9-3 Exceptions and additions; tank systems

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264, Subpart J

Sec. 3. (a) In 40 CFR 264.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

(b) In 40 CFR 264.191(c), delete "July 14, 1986" and insert "June 20, 1988".

(c) In 40 CFR 264.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the following:

(1) Secondary containment must be provided by January 12, 1989, for tank systems which meet all criteria described as follows:

(A) The tank system is an interim status or permitted unit.

(B) The tank system is underground and cannot be entered for inspection.

(C) The tank system is used to treat or store EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.

(2) Secondary containment must be provided by June 20, 1990, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivision (1).

(B) The tank is used to treat or store EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.

(3) Secondary containment must be provided by January 12, 1989, or when the tank system reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivision (1) or (2).

(B) The tank system is an interim status or permitted unit.

(C) The tank system is underground and cannot be entered for inspection.

(D) The tank system's age is known and documentable.

(4) Secondary containment must be provided by June 20, 1990, or when the tank system reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivisions (1) through (3).

(B) The tank system's age is known and documentable.

(5) Secondary containment must be provided by January 12, 1989, or when the facility reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivisions (1) through (4).

(B) The tank system is an interim status or permitted unit.

(C) The tank system is underground and cannot be entered for inspection.

(D) The tank system's age is unknown.

(E) The facility's age is greater than seven (7) years old by January 12, 1987.

(6) Secondary containment must be provided by June 20, 1990, or when the facility reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivisions (1) through (5).

(B) The tank system's age is unknown.

(C) The facility's age is greater than seven (7) years old by June 19, 1988.

(7) Secondary containment must be provided by January 12, 1995, for tank systems which meet all criteria described as follows:

(A) The tank system does not meet the criteria in subdivisions (1) through (6).

(B) The tank system is an interim status or permitted unit.

(C) The tank system is underground and cannot be entered for inspection.
(D) The tank system's age is unknown.
(E) The facility's age is less than seven (7) years old by January 12, 1987.
(8) Secondary containment must be provided by June 20, 1996, for tank systems which meet all criteria described as follows:
(A) The tank system does not meet the criteria in subdivisions (1) through (7).
(B) The tank system's age is unknown.
(C) The facility's age is less than seven (7) years old by June 19, 1988.
(Solid Waste Management Division; 329 IAC 3.1-9-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 936; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 10. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-10-1 Adoption of federal interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR 265)

Authority: IC 13-7
Affected: 40 CFR 265

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 265 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-10-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-10-2 Exceptions and additions; interim status standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-14-10; IC 13-22-2; IC 13-22-4-3.1; IC 13-30-3; 40 CFR 265

Sec. 2. Exceptions and additions to federal interim status standards are as follows:
(1) In 40 CFR 265.1(a) dealing with scope of the permit, delete "national" and insert "state".
(2) In 40 CFR 265.1(b), delete "section 3005 of RCRA" and insert "329 IAC 3.1-13" in both places where it occurs.
(3) Delete 40 CFR 265.1(c)(4).
(4) In 40 CFR 265.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".
(5) Reports to the state required at 40 CFR 265.56(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.
(6) The written spill report required by 40 CFR 265.56(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.
(7) In 40 CFR 265.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "form provided by the commissioner".
(8) In 40 CFR 265.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".
(9) In 40 CFR 265.77 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 department.
(B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department.".
(10) In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (d), "The commissioner may request other information as required by Subparts AA through CC of this part be submitted in an electronic format as prescribed by the commissioner.".
(11) In addition to the requirements in 40 CFR 265, 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.

(12) In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date.

(13) Delete 40 CFR 265.112(d)(3)(ii) and substitute: "Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under IC 13-30-3, or final administrative order under IC 4-21.5 to cease receiving hazardous waste or close".

(14) Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision (11).

(15) Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-14.

(16) In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

(17) In 40 CFR 265.191(c), delete "July 14, 1986" and insert "June 20, 1988".

(18) In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in 329 IAC 3.1-9-3(c)(1) through 329 IAC 3.1-9-3(c)(8).

(19) In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

(20) In 40 CFR 265.301(d)(2)(i)(C), delete "RCRA Section 3005(c)" and insert "329 IAC 3.1-13".

(21) In 40 CFR 265.314(g)(2) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

(22) In 40 CFR 265.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

(23) In 40 CFR 265.316(f), delete "fiber drums" and substitute "nonmetal containers".

(24) Delete 40 CFR 265.430(b) and substitute the following: "The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule.".

(Solid Waste Management Division; 329 IAC 3.1-10-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; 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 2434; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3113; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1876)

329 IAC 3.1-10-3 Classification of underground injection wells

Authority: IC 13-7
Affected: 40 CFR 144.6; 40 CFR 265.430

Sec. 3. (a) Class I wells are wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-fourth (¼) of a mile of the well bore, an underground source of drinking water. Class I wells also include other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-fourth (¼) of a mile of the well bore, an underground source of drinking water.

(b) Class II wells are wells which inject fluids described as follows:

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas.

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) Class III wells are wells which inject for extraction of minerals including the following:

(1) Mining of sulfur by the Frasch process.

(2) In situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V wells.

(3) Solution mining of salts of potash.

(d) Class IV wells are wells described as follows:

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites, to dispose of hazardous waste or radioactive waste into a formation which within one-fourth (¼) of a mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste facilities to dispose of hazardous waste, which cannot be classified under subsection (a) or this subsection, for example, wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to 40 CFR 146.04.

(e) Class V wells are injection wells not included in Class I, II, III, or IV. *(Solid Waste Management Division; 329 IAC 3.1-10-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 938; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 11. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

329 IAC 3.1-11-1 Adoption of federal standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities

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

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 266 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-11-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

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, Subpart G, except for 40 CFR 266.80(a)(6) through 40 CFR 266.80(a)(7), and insert 329 IAC 3.1-11.1.

(Solid Waste Management Division; 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; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-

329090365FRA; filed Jun 3, 2015, 1:21 p.m.: 20150701-IR-329140288FRA)

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 13-11-2-194; IC 13-11-2-267; IC 13-15-2; IC 13-22-2

Sec. 1. (a) This rule applies to:
(1) retailers as defined in IC 13-11-2-194(b);
(2) wholesalers as defined in IC 13-11-2-267(b);
(3) owners or operators of reclamation facilities;
(4) owners or operators of intermediate storage facilities; and
(5) 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 Division; 329 IAC 3.1-11.1-1; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)*

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) "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 case material.
(3) Acid.
(4) Paper cellulose material.

(d) "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.

(e) "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.

(f) "Partially reclaimed material" means a solid waste material that has been processed but must be processed further before recovery is complete.

(g) "Plates and groups" means the internal components of a spent lead acid battery that are constructed of lead or lead alloys, or both.

(h) "Reclamation facility" means a facility involved in the recovery of components from spent lead acid batteries and includes:
(1) Battery breaking facilities engaging in battery breaking or cracking.

(2) Secondary lead smelters or smelters.

(i) "Reclamation process" means the process of recovering components from whole spent lead acid batteries and includes, but is not limited to:

(1) battery cracking; and

(2) smelting.

(j) "Spent lead acid battery", for purposes of this rule, means any lead acid battery that has been used and 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.

(k) "Staging" means holding whole spent lead acid batteries in trailers, which have arrived at a reclamation facility until the batteries can be transferred to a permitted storage area or moved into the reclamation process.

(l) "Storage", for purposes of this rule, means the holding of spent lead acid batteries, or components thereof, for a temporary period, at the end of which the batteries or components are treated, disposed of, or store elsewhere.

(m) "Whole spent lead acid battery" means a spent lead acid battery that has not been subjected to battery-breaking operations. *(Solid Waste Management Division; 329 IAC 3.1-11.1-2; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)*

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

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 and wholesalers that store spent lead acid batteries prior to sending off-site for storage or reclamation must comply with the requirements in 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.

(Solid Waste Management Division; 329 IAC 3.1-11.1-3; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)

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) If a 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:

(A) in good condition; and

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

(2) Spent lead acid batteries must be stored upright and secured to prevent overturning.

(3) Spent lead acid batteries must be stored in a building with a roof or stored in a covered container that is:

(A) in good condition; and

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

(4) Spent lead acid batteries may not be stored for more than three hundred sixty-five (365) consecutive days.

(5) 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.

(6) Any spent lead acid battery being discarded shall be sent to:

(A) a RCRA permitted reclamation facility;

(B) a universal waste handler in accordance with 329 IAC 3.1-16; or

(C) a facility collecting batteries for delivery to a recycling facility.

(7) If accumulating more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries at any time, notify the commissioner of the following within thirty (30) days after the effective date of this rule:

(A) Location of the storage site.

(B) Contact information, including name, address, and phone number.

(Solid Waste Management Division; 329 IAC 3.1-11.1-4; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)

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 reclamation 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 as the subparts are incorporated by reference in 329 IAC 3.1-9:

(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) Whole spent lead acid batteries that are transported by trailer to reclamation facilities may be staged at the reclamation facility 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 leaking batteries shall be removed from the trailer and 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).

(c) Owners or operators of reclamation facilities that reclaim spent lead acid batteries, 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) Unless an exemption pursuant to 329 IAC 3.1-5-4 is granted by the commissioner:

(A) Reclamation facilities shall comply with all applicable generator requirements of 40 CFR 262 as those requirements are incorporated by reference in 329 IAC 3.1-7 for partially reclaimed materials generated on-site or any other waste generated on-site that is hazardous pursuant to 40 CFR 261 as incorporated by reference in 329 IAC 3.1-6. Storage of on-site generated waste in piles is prohibited by land disposal restrictions unless stored in compliance with 40 CFR 265, Subpart DD as referenced by 40 CFR 262, as 40 CFR 262 and 40 CFR 265, Subpart DD are incorporated by reference in 329 IAC 3.1-7 and 329 IAC 3.1-10.

(B) Reclamation facilities shall obtain a permit in accordance with 329 IAC 3.1-13 for greater than ninety (90) day storage of any on-site generated hazardous waste. Storage in piles is prohibited by land disposal restrictions unless stored in compliance with 40 CFR 264, Subpart DD as incorporated by reference in 329 IAC 3.1-9.

(C) Storage of hazardous waste received from off-site requires a permit obtained in accordance with 329 IAC 3.1-13.

Storage in piles is prohibited by land disposal restrictions unless stored in compliance with 40 CFR 264, Subpart DD as incorporated by reference in 329 IAC 3.1-9.

(3) Reclamation facilities requiring a permit under 329 IAC 3.1-11.1-5(c)(2) *[subdivision (2)]* shall submit a permit application in accordance with 329 IAC 3.1-13 within one hundred eighty (180) days of the effective date of this rule.

(Solid Waste Management Division; 329 IAC 3.1-11.1-5; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)

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 components of a spent lead acid battery must comply with 329 IAC 3.1-8.

(b) Facilities that receive and store components of spent lead acid batteries that are a hazardous waste as identified in 40 CFR 261 as incorporated by reference in 329 IAC 3.1-6 must comply with the manifest requirements of 40 CFR 264, Subpart E as incorporated by reference in 329 IAC 3.1-9.

(c) The requirements of 40 CFR 264, Subpart E as incorporated by reference in 329 IAC 3.1-9 do not apply to the transportation of whole spent lead acid batteries. *(Solid Waste Management Division; 329 IAC 3.1-11.1-6; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)*

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. The closure requirements are as follows:

(1) Permitted facilities are subject to the closure and post-closure requirements of 40 CFR 264, Subpart G as incorporated by reference in 329 IAC 3.1-9, and corrective action for solid waste management units may be initiated at any time during the life of the facility.

(2) At closure of unpermitted hazardous waste storage areas, the owner or operator must comply with 40 CFR 265.111 and 265.114 as these sections are incorporated by reference in 329 IAC 3.1-10.

(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.

(Solid Waste Management Division, 329 IAC 3.1-11.1-7; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)

Rule 11.5. Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit (40 CFR 267)

329 IAC 3.1-11.5-1 Adoption of federal standards for owners and operators of hazardous waste facilities operating under a standardized permit

Authority: IC 4-22-2-21; IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 267

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 267 is incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-11.5-1; filed Jul 31, 2009, 8:35 a.m.: 20090826-IR-329080212FRA)*

329 IAC 3.1-11.5-2 Exceptions and additions to 40 CFR 267

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-22-4-3.1; IC 13-30-3; 40 CFR 267

Sec. 2. Exceptions and additions to federal standards for owners and operators of hazardous waste facilities operating under a standardized permit are as follows:

(1) In 40 CFR 267.3, dealing with imminent hazard action, delete "section 7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(2) Reports to the state required at 40 CFR 267.56 must be communicated immediately to the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, MC 66-30, Indianapolis, Indiana 46204-2251, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana).

(3) In addition to the report of a release, fire, or explosion from the facility required by 40 CFR 267.56(c), the permittee shall comply with all requirements for spill reporting contained in the rules of the water pollution control board at 327 IAC 2-6.1.

(4) In 40 CFR 267.75(a) dealing with the biennial report, delete "EPA form 8700-13B" and insert "a form provided by the commissioner".

(5) In addition to the requirements in 40 CFR 267, Subpart E, copies of 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.

(6) Delete 40 CFR 267, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

(7) The exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J, found in 329 IAC 3.1-9-3, also apply to tank systems under 40 CFR 267, Subpart J if the tank systems were permitted under 40 CFR 264, Subpart J before the effective date of this rule.

(Solid Waste Management Division; 329 IAC 3.1-11.5-2; filed Jul 31, 2009, 8:35 a.m.: 20090826-IR-329080212FRA)

Rule 12. Land Disposal Restrictions

329 IAC 3.1-12-1 Adoption of federal land disposal restrictions

Authority: IC 13-7
Affected: 40 CFR 268

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 268 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-12-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed May 6, 1994, 5:00 p.m.: 17 IR 2065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-155; IC 13-22-2; 40 CFR 268

Sec. 2. Exceptions and additions to land disposal restrictions are as follows:

(1) Primacy for granting exemptions from land disposal restrictions incorporated in this rule are retained as federal authorities and must be granted by the administrator of the EPA. Exemptions for which federal primacy is retained are described as follows:

(A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.
(B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.
(C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).
(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

(A) 40 CFR 268.5.
(B) 40 CFR 268.6.
(C) 40 CFR 268.42(b).
(D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C or Subpart D, as incorporated in this rule.

(5) Delete 40 CFR 268.2(e) and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.

(6) Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator's or treater's files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in 40 CFR 268.7(b)(4).

The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

(7) Delete 40 CFR 268, Subpart B.

(8) In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.

(9) Delete 40 CFR 268.33.

(10) In 40 CFR 268.40, remove the entry for waste code U202 from the table "Treatment Standards for Hazardous Wastes".

(11) In 40 CFR 268, Appendix VII, remove the entry for waste code U202 from Table 1, "Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs – Comprehensive List".

(Solid Waste Management Division; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA)

Rule 13. State Administered Permit Program

329 IAC 3.1-13-1 Adoption of federal procedures for state administered permit program

Authority: IC 13-7
Affected: 40 CFR 270

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 270 is hereby incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-13-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed May 6, 1994, 5:00 p.m.: 17 IR 2065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-2 Exceptions and additions; permit program

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-15; IC 13-22-2; IC 13-22-3; IC 13-30; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:

(1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.

(2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for denying, issuing, modifying, revoking and reissuing, and terminating all final state permits other than "emergency permits" and "permits by rule".

(3) Delete 40 CFR 270.1(b).

(4) Delete 40 CFR 270.3.

(5) Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.

(6) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.

(7) Delete 40 CFR 270.14(b)(18).

(8) Delete 40 CFR 270.14(b)(20).

(9) In 40 CFR 270.32(a), delete references to "alternate schedules of compliance" and "considerations under federal law". These references in the federal permit requirements are only applicable to federally issued permits.

(10) In 40 CFR 270.32(b)(2), delete "under section 3005 of this act" and substitute "this article".

(11) Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following: If new requirements become effective, including any interim final regulations, during the permitting process which are:

(A) prior to modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and

(B) of sufficient magnitude to make additional proceeding desirable, the commissioner shall, at the commissioner's discretion, reopen the comment period.

(12) Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.

(13) Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.

(14) Delete 40 CFR 270.64.

(15) In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

(Solid Waste Management Division; 329 IAC 3.1-13-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665)

329 IAC 3.1-13-3 General application requirements

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 270.10

Sec. 3. (a) Any person who is required to have a permit, including a new applicant and a permittee with an expiring permit, shall complete, sign, and submit an application to the commissioner as described in this section and 40 CFR 270.70 through 40 CFR 270.73. Persons currently authorized with interim status shall apply for permits when required by the commissioner. Persons covered by permits by rule as provided for in 40 CFR 270.60 need not apply. Procedures for applications, issuance, and administration of emergency permits are found in 40 CFR 270.61. Procedures for application, issuance, and administration of research, development, and demonstration permits are found in 40 CFR 270.65.

(b) When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) The commissioner shall not issue a permit before receiving a complete application for a permit except for permits-by-rule, or emergency permits. An application for a permit is complete when the commissioner receives an application form and any supplemental information which are completed to her satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection (j).

(d) All applicants for final state permits shall provide information set forth in 40 CFR 270.13 and applicable sections in 40 CFR 270.14 through 40 CFR 270.21 to the commissioner, using the application form provided by the commissioner.

(e) Existing hazardous waste management facilities and interim status qualifications are as follows:

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under IC 13 that render the facility subject to the requirement to have a final state permit must submit Part A of the permit application no later than:

(A) thirty (30) days after the effective date of this article, or revision of this article, which first requires compliance under 329 IAC 3.1-10 or 329 IAC 3.1-11, unless the publication date is more than four (4) months prior to the effective date, in which case Part A of the permit application must be submitted no later than the effective date; or

(B) thirty (30) days after the date they first become subject to the standards set forth in 329 IAC 3.1-10 or 329 IAC 3.1-11;

whichever occurs first. For purposes of this rule, those persons who were in compliance with 329 IAC 3-34, which was repealed in 1992, will be deemed to be in compliance with this subdivision. For generators generating greater than one

hundred (100) kilograms but less than one thousand (1,000) kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

(2) The commissioner may, by an order issued under IC 13-30-3, extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of the permit application.

(3) At any time after the effective date of this article, the owner and operator of an existing hazardous waste management facility may be required to submit a final state permit application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit their final state permit application at any time. Any owner or operator shall be allowed at least six (6) months from the date of the requirement to submit the final state permit application. Notwithstanding this subdivision, any owner or operator of an existing hazardous waste management facility must submit a Part B permit application in accordance with the dates specified in 40 CFR 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under IC 13 that render the facility subject to the requirement to have a final state permit must submit a Part B application in accordance with the dates specified in 40 CFR 270.73.

(4) Failure to furnish a requested final state permit application on time, or to furnish in full the information required by the application, is grounds for termination of interim status under this rule.

(f) No person shall begin physical construction or operation of a new hazardous waste management facility without having complied with IC 13-22-10, if applicable, and having received a finally effective final state permit pursuant to this rule.

(g) The requirements for updating permit applications are as follows:

(1) If any owner or operator of a hazardous waste management facility has filed a Part A permit application pursuant to subsection (e)(1) and has not yet filed a final state permit application, the owner or operator shall file an amended Part A application:

(A) with the commissioner no later than thirty (30) days from the effective date of regulatory provisions listing or designating wastes as hazardous in the state in addition to those already listed or designated by the state, if the facility is treating, storing, recovering, or disposing of any of those newly listed or designated wastes; or

(B) as necessary to comply with provisions of 40 CFR 270.72 for changes during interim status.

Revised permit applications necessary to comply with the provisions of 40 CFR 270.72 shall be filed with the commissioner.

(2) The owner or operator of a facility who fails to comply with the updating requirements of subdivision (1) does not receive interim status as to the wastes not covered by a duly filed Part A permit application.

(h) Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the effective permit, unless permission for a later date has been granted by the commissioner. The commissioner shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(i) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this rule for a period of at least three (3) years from the date the application is signed.

(j) Exposure information requirements are as follows:

(1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address the following:

(A) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit.

(B) The potential pathways of human exposures to hazardous wastes or constituents resulting from the releases described under clause (A).

(C) The potential magnitude and nature of the human exposure resulting from the releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in subdivision (1).

(k) The commissioner may require a permittee or an applicant to submit information in order to establish permit conditions under 40 CFR 270.32(b)(2) and 40 CFR 270.50(d). *(Solid Waste Management Division; 329 IAC 3.1-13-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 941; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3359; errata filed Feb 4,*

1998, 4:10 p.m.: 21 IR 2129; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-4 Confidentiality of information

Authority: IC 13-7
Affected: 40 CFR 270.12

Sec. 4. (a) Any information submitted to the state pursuant to this rule may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission. Claims of confidentiality must be made in compliance with the applicable portions of 329 IAC 6.1. If no claim is made at the time of submission, the state may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures contained in 329 IAC 6.1.

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. *(Solid Waste Management Division; 329 IAC 3.1-13-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-5 Federal issuance of hazardous waste management permits

Authority: IC 13-7
Affected: IC 13-7-8.5

Sec. 5. (a) All hazardous waste management permits issued by the EPA pursuant to 40 CFR 270 shall be called in within one hundred eighty (180) days after final authorization of the Indiana hazardous waste management program pursuant to 40 CFR 271.

(b) These federally issued permits shall be reviewed and, if determination is made to issue, reissued as final (state) permits pursuant to this rule. *(Solid Waste Management Division; 329 IAC 3.1-13-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-6 Permit processing

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-19-4-10; IC 13-22-2-4
Affected: IC 13-15; IC 13-19-4; IC 13-22-3

Sec. 6. The commissioner shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit in this rule and the requirements of IC 13-19-4. *(Solid Waste Management Division; 329 IAC 3.1-13-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

329 IAC 3.1-13-7 Modification, revocation and reissuance, or termination of permits

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-15-7; IC 13-22-2; 40 CFR 124.5

Sec. 7. (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the commissioner's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR 270.41 through 40 CFR 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the commissioner tentatively decides to modify or revoke and reissue a permit under this rule, she shall prepare a draft permit under section 8 of this rule incorporating the proposed changes. The commissioner may request additional information and, in the case of a modified permit, require the submission of an updated final permit application. In the case of revoked and reissued permits, the commissioner shall require the submission of a new application.

(c) IC 13-15-7 governs the modification and the revocation and reissuance of permits. In addition, when a permit is revoked

and reissued under this rule, the entire permit is reopened just as if the permit had expired and was being reissued.

(d) If a permit modification is requested by the permittee, the commissioner shall approve or deny the request according to the procedures in 40 CFR 270.42.

(e) If the commissioner decides to terminate a permit under this rule, she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 8 of this rule.

(f) A denial of a request to modify, revoke and reissue, or terminate a permit shall be in accordance with IC 4-21.5. *(Solid Waste Management Division; 329 IAC 3.1-13-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3360; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-8 Draft permits

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 124.6

Sec. 8. (a) Once an application is submitted, the commissioner shall either prepare a draft permit to issue a final state permit or prepare a draft permit to deny the final state permit.

(b) A draft permit prepared by the commissioner shall contain the following information:

(1) All conditions under 40 CFR 270.30 and 40 CFR 270.32.

(2) All compliance schedules under 40 CFR 270.33.

(3) All monitoring requirements under 40 CFR 270.31.

(4) Standards for treatment, storage, recovery, and/or disposal and other permit conditions under 40 CFR 270.30.

(c) All draft permits prepared under this section shall be:

(1) accompanied by a fact sheet under section 9 of this rule;

(2) publicly noticed under section 10 of this rule; and

(3) made available for public comment under section 11 of this rule.

(d) The commissioner shall:

(1) give notice of opportunity for a public hearing under section 12 of this rule;

(2) issue a final decision under section 14 of this rule; and

(3) respond to comments under section 13 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-13-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 943; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-9 Fact sheet

Authority: IC 13-7
Affected: 40 CFR 124.8

Sec. 9. (a) A fact sheet shall be prepared for every draft permit for a hazardous waste management facility. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the applicant and, upon request, to any other person.

(b) The fact sheet shall include, when applicable, the following:

(1) A brief description of the type of facility or activity which is the subject of the draft permit.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, recovered, stored, disposed of, injected, emitted, or discharged.

(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

(4) Reasons why any requested variance or alternatives to required standards do or do not appear justified.

(5) A description of the procedures for reaching a final decision on the draft permit including the following:

(A) The beginning and ending dates of the comment period under section 10 of this rule and the address where comments will be received.

(B) Procedures for requesting a hearing and the nature of that hearing.

(C) Any other procedures by which the public may participate in the final decision.

(6) Name and telephone number of a person to contact for additional information.

(Solid Waste Management Division; 329 IAC 3.1-13-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 943; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-10 Public notice of permit actions and public comment period

Authority: IC 13-7-7; IC 13-7-8.5-4
Affected: 40 CFR 124.10

Sec. 10. (a) The commissioner shall give public notice that either of the following actions have occurred:

(1) A draft permit has been prepared under section 8 of this rule.

(2) A hearing has been scheduled under section 12 of this rule.

(b) Timing for public notices shall be as follows:

(1) Public notice of the preparation of a draft permit required under subsection (a) shall allow at least forty-five (45) days for public comment.

(2) Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two (2) notices may be combined.

(c) Public notice of activities described in subsection (a) shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this section may waive his or her rights to receive notice for any classes and categories of permits.):

(A) The applicant.

(B) Any other agency which the commissioner knows has issued or is required to issue a UIC or 404 permit (See 33 U.S.C. 1344.) for the same facility or activity.

(C) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the advisory council on historic preservation, state historic preservation officers, and other appropriate government authorities, including any affected states.

(D) Persons on a mailing list developed as follows:

(i) Including those who request in writing to be on the list.

(ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area.

(iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals.

The commissioner may update the mailing list from time to time by requesting written indication of continued interest from those listed. The commissioner may delete from the list the name of any person who fails to respond to such a request.

(E) Any unit of local government having jurisdiction over the area where the facility is located or is proposed to be located.

(F) Each state agency having any authority under state law with respect to the construction or operation of such facility.

(2) By publication of a notice in a daily or weekly major newspaper of general circulation and broadcast over local radio stations.

(3) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) All public notices issued shall contain the following minimum information:

(1) Name and address of the office processing the permit action for which notice is being given.

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted or proposed to be conducted at the facility or activity described in the permit

application.

(4) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application.

(5) A brief description of the comment procedures required by sections 11 through 13 of this rule and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a public hearing has already been scheduled) and other procedures by which the public may participate in the permit decision.

(6) Any additional information considered necessary or proper.

(e) In addition to the general public notice described in subsection (d), the public notice of a public hearing under section 12 of this rule shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit.

(2) Date, time, and place of the public hearing.

(3) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures.

(f) In addition to the general public notice described in subsection (d), all persons identified in subsection (c) shall be mailed a copy of the fact sheet. *(Solid Waste Management Division; 329 IAC 3.1-13-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-11 Public comments and requests for public hearings

Authority: IC 13-7
Affected: 40 CFR 124.11

Sec. 11. During the public comment period provided under section 10 of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the public hearing. All comments shall be considered in making the decision and answered as provided in section 13 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-13-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-12 Public hearings

Authority: IC 13-7-7; IC 13-7-8.5-4
Affected: IC 13-15-5-1; 40 CFR 124.12

Sec. 12. (a) The commissioner shall hold a public hearing whenever required under IC 13-15-5-1 or whenever she finds, on the basis of requests, a significant degree of public interest in a draft permit, or as follows:

(1) The commissioner may also hold a public hearing at her discretion whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) The commissioner shall hold a public hearing whenever she receives written notice or opposition to a draft permit and a request for a public hearing within forty-five (45) days of public notice under section 10 of this rule.

(3) Whenever possible, the commissioner shall schedule a public hearing under this section at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the public hearing shall be given as specified in section 10 of this rule.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 10 of this rule shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the public hearing shall be made available to the public. *(Solid Waste Management Division; 329 IAC 3.1-13-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-13 Response to comments

Authority: IC 13-7-7; IC 13-7-8.5-4
Affected: IC 4-21.5-3-5; 40 CFR 124.17

Sec. 13. (a) At the time that a permit decision is issued under section 14 of this rule, the commissioner shall issue a response to comments. This response shall do the following:

(1) Specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the draft permit.

(3) Explain the right to request an adjudicatory hearing on the permit as specified in IC 4-21.5-3-5.

(b) The response to comments shall be mailed to the persons identified in section 10 of this rule and made available to the public. *(Solid Waste Management Division; 329 IAC 3.1-13-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-14 Issuance and effective date of permit

Authority: IC 13-7-7-5; IC 13-7-10
Affected: IC 4-21.5

Sec. 14. After the close of the public comment period (including any public hearing) required by section 10 of this rule on a draft permit, the commissioner shall issue a permit decision and shall follow the procedures of IC 4-21.5. *(Solid Waste Management Division; 329 IAC 3.1-13-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-15 State-administered permit program; duration of permits

Authority: IC 13-14-8; IC 13-15-2; IC 13-15-3-2
Affected: IC 13-22-2; 40 CFR 270.50

Sec. 15. (a) State permits shall be effective for a fixed term not to exceed five (5) years, except permits for post-closure activities shall be effective for a fixed term not to exceed ten (10) years.

(b) Except as provided in section 16(a) of this rule, the term of a permit shall not be extended by modification beyond five (5) years.

(c) The commissioner may issue any permit for a duration that is less than five (5) years. *(Solid Waste Management Division; 329 IAC 3.1-13-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-16 Continuation of expiring permits

Authority: IC 13-7-7-5; IC 13-7-10
Affected: IC 13-15-3-6; 40 CFR 270.51

Sec. 16. (a) The conditions of an expired permit continue in force under IC 13-15-3-6 until the effective date of a new permit if:

(1) the permittee has submitted a complete and timely application under IC 13-15-3-6, 40 CFR 270.14, and the applicable sections in 40 CFR 270.21 which is a complete (section 3 of this rule) application for a new permit; and

(2) the commissioner, through no fault of the permittee, does not issue a new permit with an effective date under section 14 of this rule on or before the expiration date of the previous permit.

(b) Permits continued under this section remain fully effective and enforceable.

(c) When the permittee is not in compliance with the conditions of the expiring or expired permit, the commissioner may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued.

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit.
(3) Issue a new permit under this rule with appropriate conditions.
(4) Take other actions authorized by this article.
(Solid Waste Management Division; 329 IAC 3.1-13-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-17 Adjudicatory hearings
Authority: IC 13-7-7-5; IC 13-7-10-4
Affected: IC 4-21.5

Sec. 17. The procedures for the conduct of adjudicatory hearings regarding permits are prescribed under IC 4-21.5. *(Solid Waste Management Division; 329 IAC 3.1-13-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-18 Preapplication public meeting and notice
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 124.31

Sec. 18. (a) This section applies to the following:
(1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.
(2) RCRA Part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations.
(3) Hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit under 40 CFR 270, Subpart J, including renewal of a standardized permit for such units, where the renewal is proposing a:
(A) significant change in facility operations;
(B) change that is not specifically identified in 40 CFR 270.42; or
(C) change that amends any terms or conditions in the supplemental portion of the standardized permit.
(b) This section does not apply to the following:
(1) Class 1 and 2 permit modifications under 40 CFR 270.42.
(2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.
(c) As used in this section, "significant change" means any change that would qualify as a Class 3 permit modification under 40 CFR 270.42.
(d) Prior to the submission of a Part B RCRA permit application for a facility or the submission of a written notice of intent to be covered by a RCRA standardized permit under 40 CFR 270, Subpart J, the applicant shall:
(1) hold at least one (1) meeting with the public in order to solicit questions and comments from the community and interested parties and inform the community and interested parties of proposed hazardous waste management activities; and
(2) post a sign-in sheet or otherwise provide a voluntary opportunity for attendees and interested parties to provide their names and addresses.
(e) The applicant shall submit the following to the department as a part of the Part B application in accordance with 40 CFR 270.14(b) or with the written notice of intent to be covered by a RCRA standardized permit under 40 CFR 270, Subpart J:
(1) A summary of the meeting.
(2) The list of attendees and their addresses developed under subsection (d).
(3) Copies of any written comments or materials submitted at the meeting.
(f) The applicant shall provide public notice of the preapplication meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the public notice required under subsection

(g).

(g) The applicant shall provide public notice in all of the following forms:

(1) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection (h), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(2) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection (h). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(3) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection (h), at least once on at least one (1) local radio station or television station. The applicant may employ another medium with prior approval of the commissioner.

(4) A notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with section 10(c)(1)(F) of this rule.

(h) The notices required under subsection (g) must include the following:

(1) The date, time, and location of the meeting.

(2) A brief description of the purpose of the meeting.

(3) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location.

(4) A statement encouraging people to contact the applicant at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting.

(5) The name, address, and telephone number of a contact person for the applicant.

(Solid Waste Management Division; 329 IAC 3.1-13-18; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1114; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 31, 2009, 8:35 a.m.: 20090826-IR-329080212FRA)

329 IAC 3.1-13-19 Public notice requirements at the application stage

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 124.32

Sec. 19. (a) This section applies to the following:

(1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.

(2) RCRA Part B applications seeking renewal of permits for such units under 40 CFR 270.51.

(b) This section does not apply to the following:

(1) Permit modifications under 40 CFR 270.42.

(2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(3) Hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit issued under 40 CFR 270, Subpart J.

(c) Requirements for notification at application submittal shall be as follows:

(1) The commissioner shall provide public notice as set forth in section 10(c)(1)(D) of this rule, and notice to appropriate units of state and local government as set forth in section 10(c)(1)(F) of this rule, that a Part B permit application has been submitted to the department and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the commissioner. The notice must include the following:

(A) The name and telephone number of the applicant's contact person.

(B) The name and telephone number of the department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process.

(C) An address to which interested parties can write in order to be put on the applicant's mailing list.

(D) The location where copies of the permit application and any supporting documents can be viewed and copied.

(E) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location on the front page of the notice.

(F) The date that the application was submitted.

(d) Concurrent with the notice required under subsection (c), the commissioner must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office. *(Solid Waste Management Division; 329 IAC 3.1-13-19; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1115; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 31, 2009, 8:35 a.m.: 20090826-IR-329080212FRA)*

329 IAC 3.1-13-20 Information repository

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 124.33

Sec. 20. (a) This section applies to all applicants seeking RCRA permits for hazardous waste management units over which the department has permit issuance authority.

(b) The commissioner may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the commissioner shall consider a variety of factors, including the following:

(1) The level of public interest.

(2) The type of facility.

(3) The presence of an existing repository.

(4) The proximity to the nearest copy of the administrative record.

If the commissioner determines, at any time after submittal of a permit application, that there is a need for a repository, then the commissioner shall notify the applicant that he or she must establish and maintain an information repository. See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the commissioner to fulfill the purposes for which the repository is established. The commissioner shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the applicant. If the commissioner finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the commissioner shall specify a more appropriate site.

(e) The commissioner shall specify requirements for informing the public about the information repository. At a minimum, the commissioner shall require the applicant to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner or operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the commissioner. The commissioner may close the repository at his or her discretion, based on the factors in subsection (b). *(Solid Waste Management Division; 329 IAC 3.1-13-20; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1115; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-21 Procedures for RCRA standardized permit

Authority: IC 4-22-2-21; IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2

Sec. 21. The RCRA standardized permits procedures at 40 CFR 124, Subpart G*, are incorporated by reference.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204. *(Solid Waste Management Division; 329 IAC 3.1-13-21; filed Jul 31, 2009, 8:35 a.m.: 20090826-IR-329080212FRA; filed Oct 6, 2016, 1:20 p.m.: 20161102-IR-329160093FRA)*

Rule 14. Financial Requirements for Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-14-1 Applicability

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.140

Sec. 1. (a) The requirements of sections 3 through 12 and 24 through 40 of this rule apply to owners or operators of all hazardous waste facilities, except as provided otherwise in this section or are excluded from permit requirements in 40 CFR 265.1.

(b) The requirements of sections 13 through 22 of this rule apply only to owners and operators of:

(1) disposal facilities;

(2) tank systems that are required under 40 CFR 265.197 to meet the requirements for landfills; and

(3) containment buildings that are required under 40 CFR 265.1102 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this rule. *(Solid Waste Management Division; 329 IAC 3.1-14-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1971; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.141

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

(b) "Closure plan" means the plan for closure prepared in accordance with the requirements of 40 CFR 265.112.

(c) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with section 3(a) through 3(c) of this rule.

(d) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with section 13(a) through 13(c) of this rule.

(e) "Parent corporation" means a corporation that directly owns at least fifty percent (50%) of the voting stock of the corporation that is the facility owner or operator; the corporation that is the facility owner or operator is deemed a subsidiary of the parent corporation.

(f) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of 40 CFR 265.117 through 40 CFR 265.120.

(g) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage, are intended to assist in the understanding of this rule, and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of the existing resources properly classifiable as current assets or the creation of other current liabilities.

(4) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(5) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(6) "Net working capital" means current assets minus current liabilities.

(7) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(8) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as good will and rights to patents or royalties.

(h) In the liability insurance requirements in section 24 of this rule, the terms "bodily injury" and "property damage" must

have the meanings given these terms by Indiana law. However, these terms do not include those liabilities, which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The board intends the meanings of other terms used in the liability insurance requirements in section 24 of this rule to be consistent with their common meanings within the insurance industry. The following definitions are intended to assist in the understanding of this rule and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(1) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(4) "Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

(Solid Waste Management Division; 329 IAC 3.1-14-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1971; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-3 Cost estimate for closure

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

Sec. 3. (a) The owner or operator shall keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 265.111 through 40 CFR 265.115, applicable closure requirements of 40 CFR 265.178, 40 CFR 265.197, 40 CFR 265.228, 40 CFR 265.258, 40 CFR 265.280, 40 CFR 265.310, 40 CFR 265.351, 40 CFR 265.381, 40 CFR 265.404, and 40 CFR 265.1102, and the following:

(1) The estimate must equal the cost of closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. See 40 CFR 265.112(b).

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of "parent corporation" in section 2(e) of this rule. The owner or operator may use costs for on-site disposal if the owner can demonstrate that on-site disposal capacity exists at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, or nonhazardous waste if applicable under 40 CFR 265.113(d), facility structures or equipment, land, or other facility assets at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero (0) cost for hazardous waste that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 4 of this rule. For owners and operators using the financial test or guarantee, the closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before the submission of updated information to the commissioner as specified in section 9(c) of this rule. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty (30) days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than thirty (30) days after the commissioner has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility:

(1) The latest closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted closure cost estimate.

(Solid Waste Management Division; 329 IAC 3.1-14-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 947; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1972; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-4 Financial assurance for closure; approach options

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143

Sec. 4. An owner or operator of each facility shall establish financial assurance for closure of the facility. An owner or operator shall choose from the options as specified in sections 5 through 9 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-14-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-5 Closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(a)

Sec. 5. (a) An owner or operator may satisfy the requirements of section 4 of this rule by establishing a closure trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the commissioner. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 26(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement, for example, see section 26(a) of this rule. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(c) Payments into the trust fund must be made annually by the owner or operator over the twenty (20) years beginning with July 1, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments in the closure trust fund must be made as follows:

(1) The first payment must be made by July 1, 1982, except as provided in subsection (e). The first payment must be at least equal to the current closure cost estimate, except as provided in section 10 of this rule, divided by the number of years in the pay-in-period.

(2) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where: CE = The current closure cost estimate.
CV = The current value of the trust fund.
Y = The number of years remaining in the pay-in-period.

(d) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (c).

(e) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section and sections 6 through 9 of this rule, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made as specified in subsection (c).

(f) After the pay-in-period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the

amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(1) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate; or

(2) obtain other financial assurance as specified in this section and sections 6 through 9 of this rule to cover the difference.

(g) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section and sections 6 through 9 of this rule for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (g) or (h), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(j) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty (60) days after receiving bills for partial or final closure activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

(k) The commissioner shall agree to termination of the trust when:

(1) the owner or operator substitutes alternate financial assurance as specified in section 4 of this rule, this section, and sections 6 through 11 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 4 of this rule, this section, and sections 6 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-6 Surety bond guaranteeing payment into a closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; IC 23-1-16; 40 CFR 265.143(b)

Sec. 6. (a) An owner or operator may satisfy the requirements of this rule by:

(1) obtaining a surety bond that conforms to the requirements of this section; and

(2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 5 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(2) Until the standby trust fund is funded pursuant to the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule, the following are not required by sections 4 through 5 of this rule, this section, and sections

7 through 11 of this rule:

(A) Payments into the trust fund as specified in section 5 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-14-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 949; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1974; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)*

329 IAC 3.1-14-7 Closure letter-of-credit option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(c)

Sec. 7. (a) An owner or operator may satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and submitting the letter to the commissioner. The issuing institution must be an entity that has the authority to issue letters-of-credit and whose letters-of-credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter-of-credit must be identical to the wording specified in section 29 of this rule.

(c) An owner or operator who uses a letter-of-credit to satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in section 5 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(2) Unless the standby trust fund is funded pursuant to the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule, the following are not required by sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule:

(A) Payments into the trust fund as specified in section 5 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(1) The EPA identification number, name, and address of the facility.

(2) The amount of funds assured for closure of the facility by the letter-of-credit.

(e) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(f) The letter-of-credit must be issued in an amount at least equal to the current closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the commissioner may draw on the letter-of-credit.

(i) If the owner or operator does not establish alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date, the commissioner shall draw on the letter-of-credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of such assurance from the commissioner.

(j) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 950; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1975; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-8 Closure insurance option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(d)

Sec. 8. (a) An owner or operator may satisfy the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule by obtaining closure insurance that conforms to the requirements of this section and submitting a certificate of such insurance to the commissioner. The owner or operator shall submit the certificate of insurance to the commissioner or establish other financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(b) The wording of the certificate of insurance must be identical to the wording specified in section 30 of this rule.

(c) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate except as provided in section 10 of this rule. As used in this section, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy also must guarantee that once final closure begins, the insurer shall be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(e) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the commissioner shall instruct the insurer to make reimbursements in such amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursement of such amounts as the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

(f) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subsection (j). Failure to pay the premium, without substitution of alternate financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule, constitutes a major violation of this rule warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(1) the commissioner deems the facility abandoned;

(2) interim status is terminated or revoked;

(3) closure is ordered by the commissioner, the Environmental Protection Agency (EPA), or court of competent jurisdiction;

(4) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or

(5) the premium due is paid.

(i) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(j) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 951; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1976; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-9 Financial test and guarantee for closure option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(e)

Sec. 9. (a) An owner or operator may satisfy the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by demonstrating that the owner or operator passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as follows:

(1) The owner or operator shall have the following:

(A) Two (2) of the following three (3) ratios:

(i) A ratio of total liabilities to net worth less than two (2.0).

(ii) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(B) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars ($10,000,000).

(D) Assets located in the United States amounting to at least:

(i) ninety percent (90%) of total assets; or

(ii) six (6) times the sum of the current closure and post-closure cost estimates.

(2) The owner or operator shall have the following:

(A) A current rating for the most recent bond issuance of:

(i) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(ii) Aaa, Aa, A, or Baa as issued by Moody's.

(B) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars ($10,000,000).

(D) Assets located in the United States amounting to at least:

(i) ninety percent (90%) of total assets; or

(ii) six (6) times the sum of the current closure and post-closure cost estimates.

(b) As used in subsection (a), "current closure and post-closure cost estimates" refers to the cost estimates required to be

shown in section 31 of this rule of the letter from the owner's or operator's chief financial officer.

(c) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:

(1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(B) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).

(e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance as specified in sections 5 through 8 of this rule and this section within thirty (30) days after notification of such a finding.

(g) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subsection (c)(2).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule within thirty (30) days after notification of the disallowance.

(h) The owner or operator is no longer required to submit the items specified in subsection (c) when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 8 of this rule and this section; or

(2) the commissioner releases the owner or operator from the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule in accordance with section 12 of this rule.

(i) An owner or operator may meet the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (g) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner as specified in subsection (c). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(1) If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall perform final closure in accordance with the closure plan and other interim status requirements or establish a trust fund as specified in section 5 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(3) If the owner or operator fails to:

(A) provide alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule; and

(B) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(Solid Waste Management Division; 329 IAC 3.1-14-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 952; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1977; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-10 Use of multiple financial mechanisms option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(f)

Sec. 10. An owner or operator may satisfy the requirements of sections 4 through 9 of this rule and this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters-of-credit, and insurance. The mechanisms must be as specified in sections 5 through 8 of this rule, respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility. *(Solid Waste Management Division; 329 IAC 3.1-14-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-11 Use of a financial mechanism for multiple facilities option

Authority: IC 13-7-3; IC 13-7-8.5-4
Affected: 40 CFR 265.143(g)

Sec. 11. An owner or operator may use a financial assurance mechanism specified in section 4 of this rule to meet the requirements of section 4 of this rule for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. *(Solid Waste Management Division; 329 IAC 3.1-14-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-12 Release of owner or operator from the requirements for financial assurance for closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(h)

Sec. 12. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by section 4 of this rule to maintain financial assurance for final closure of the facility, unless the commissioner has reason to believe that final closure has not been

in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that closure has not been in accordance with the approved closure plan. *(Solid Waste Management Division; 329 IAC 3.1-14-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-13 Cost estimate for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.144

Sec. 13. (a) The owner or operator of a hazardous waste disposal unit shall keep at the facility a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in 40 CFR 265.117 through 40 CFR 265.120, 40 CFR 265.228, 40 CFR 265.258, 40 CFR 265.280, 40 CFR 265.310, and the following:

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in section 2(e) of this rule.)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimates by the number of years of post-closure care required under 40 CFR 265.117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 14 of this rule. For owners or operators using the financial test or guarantee, the post-closure care cost estimate must be updated for inflation no later than thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the commissioner as specified in section 19(c) of this rule. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate no later than thirty (30) days after a revision to the post-closure plan that increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than thirty (30) days after the commissioner has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest post-closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted post-closure cost estimate. *(Solid Waste Management Division; 329 IAC 3.1-14-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-14 Financial assurance for post-closure care; approach options

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145

Sec. 14. By the effective date of this article, an owner or operator of each disposal facility with a hazardous waste disposal unit shall establish financial assurance for post-closure care of the disposal unit. The owner or operator shall choose from the options as specified in sections 15 through 19 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-14-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 955; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1980; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-15 Post-closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(a)

Sec. 15. (a) An owner or operator may satisfy the requirements of section 14 of this rule by establishing a post-closure trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the commissioner. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 26(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement, for example, see section 26(b) through 26(c) of this rule. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(c) Payments into the trust fund must be made annually by the owner or operator over the twenty (20) years beginning with July 1, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(1) The first payment must be made by July 1, 1982, except as provided in subsection (e). The first payment must be at least equal to the current post-closure cost estimate, except as provided in section 20 of this rule, divided by the number of years in the pay-in-period.

(2) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where: CE = The current post-closure cost estimate.
CV = The current value of the trust fund.
Y = The number of years remaining in the pay-in-period.

(d) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (c).

(e) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section and sections 16 through 19 of this rule, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made as specified in subsection (c).

(f) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(1) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or

(2) obtain other financial assurance as specified in this section and sections 16 through 19 of this rule to cover the difference.

(g) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section and sections 16 through 19 of this rule for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (g) or (h), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(j) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator

demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.

(k) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(l) The commissioner shall agree to termination of the trust when:

(1) the owner or operator substitutes alternate financial assurance as specified in this section and sections 16 through 19 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 955; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1980; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-16 Surety bond guaranteeing payment into a post-closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(b)

Sec. 16. (a) An owner or operator may satisfy the requirements of section 14 of this rule by:

(1) obtaining a surety bond that conforms to the requirements of this section; and

(2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 15 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(2) Until the standby trust fund is funded pursuant to the requirements of sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule, the following are not required by sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule:

(A) Payments into the trust fund as specified in section 15 of this rule.

(B) Updating of Schedule A of the trust agreement in accordance with section 26 of this rule to reflect current post-closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule. *(Solid Waste Management Division; 329 IAC 3.1-14-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 956; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1981; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2437)*

329 IAC 3.1-14-17 Post-closure letter-of-credit option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(c)

Sec. 17. (a) An owner or operator may satisfy the requirements of section 14 of this rule by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and submitting the letter to the commissioner. The issuing institution must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter-of-credit must be identical to the wording specified in section 29 of this rule.

(c) An owner or operator who uses a letter-of-credit to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in section 15 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(2) Unless the standby trust fund is funded pursuant to the requirements of sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule, the following are not required by sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule:

(A) Payments into the trust fund as specified in section 15 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current post-closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(1) The EPA identification number, name, and address of the facility.

(2) The amount of funds assured for post-closure care of the facility by the letter-of-credit.

(e) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified

mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(f) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(h) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(i) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.

(j) If the owner or operator does not establish alternate financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date, the commissioner shall draw on the letter-of-credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule and obtain written approval of such assurance from the commissioner.

(k) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 957; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1982; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-18 Post-closure insurance option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(d)

Sec. 18. (a) An owner or operator may satisfy the requirements of section 14 of this rule by obtaining post-closure insurance that conforms to the requirements of this section and submitting a certificate of such insurance to the commissioner. The owner or operator shall submit the certificate of insurance to the commissioner or establish other financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(b) The wording of the certificate of insurance must be identical to the wording specified in section 30 of this rule.

(c) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule. As used in this section, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy also must guarantee that once post-closure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(e) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the insurer to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide a detailed written statement of reasons.

(f) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subsection (k). Failure to pay the premium, without substitution of alternate financial assurance as specified in sections 14 through 17 of this rule, this section, and sections 19 through 21 of this rule, constitutes a major violation of this rule warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(1) the commissioner deems the facility abandoned;

(2) the interim status is terminated or revoked;

(3) closure is ordered by the commissioner, the Environmental Protection Agency (EPA), or court of competent jurisdiction;

(4) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or

(5) the premium due is paid.

(i) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(j) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.

(k) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-18; filed Jan 24, 1992, 2:00 p.m.: 15 IR 958; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1983; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-19 Financial test and guarantee for post-closure care option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(e)

Sec. 19. (a) An owner or operator may satisfy the requirements of sections 14 through 18 of this rule, this section, and sections 20 through 22 of this rule by demonstrating that the owner or operator passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as follows:

(1) The owner or operator shall have the following:

(A) Two (2) of the following three (3) ratios:

(i) A ratio of total liabilities to net worth less than two (2.0).

(ii) Ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(B) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars ($10,000,000).

(D) Assets located in the United States amounting to at least:

(i) ninety percent (90%) of the total assets; or

(ii) six (6) times the sum of the current closure and post-closure cost estimates.

(2) The owner or operator shall have the following:

(A) A current rating for the most recent bond issuance of:

(i) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(ii) Aaa, Aa, A, or Baa as issued by Moody's.

(B) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars ($10,000,000).

(D) Assets located in the United States amounting to at least:

(i) ninety percent (90%) of the total assets; or

(ii) six (6) times the sum of the current closure and post-closure cost estimates.

(b) As used in subsection (a), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in the letter from the owner's or operator's chief financial officer in section 31 of this rule.

(c) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:

(1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(B) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).

(e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to

the commissioner of intent to establish alternate financial assurance as specified in sections 15 through 18 of this rule and this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section within thirty (30) days after notification of such a finding.

(g) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subsection (c)(2).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section within thirty (30) days after notification of the disallowance.

(h) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(i) The owner or operator is no longer required to submit the items specified in subsection (c) when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 15 through 18 of this rule and this section; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(j) An owner or operator may meet the requirements of sections 14 through 18 of this rule, this section, and sections 20 through 21 of this rule by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (h) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner as specified in subsection (c). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(1) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other interim status requirements or establish a trust fund as specified in section 15 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(3) If the owner or operator fails to:

(A) provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section; and

(B) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(Solid Waste Management Division; 329 IAC 3.1-14-19; filed Jan 24, 1992, 2:00 p.m.: 15 IR 960; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1984; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-20 Use of multiple financial mechanisms option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(f)

Sec. 20. An owner or operator may satisfy the requirements of section 14 of this rule by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters-of-credit, and insurance. The mechanisms must be as specified in sections 15 through 18 of this rule, respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility. *(Solid Waste Management Division; 329 IAC 3.1-14-20; filed Jan 24, 1992, 2:00 p.m.: 15 IR 961; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-21 Use of a financial mechanism for multiple facilities option

Authority: IC 13-7-3; IC 13-7-8.5-4
Affected: 40 CFR 265.145(g)

Sec. 21. An owner or operator may use a financial assurance mechanism specified in this rule to meet the requirements of section 14 of this rule for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. *(Solid Waste Management Division; 329 IAC 3.1-14-21; filed Jan 24, 1992, 2:00 p.m.: 15 IR 961; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-22 Release of owner or operator from the requirements for financial assurance for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(h)

Sec. 22. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by sections 14 through 21 of this rule and this section to maintain financial assurance for post-closure care of that unit, unless the commissioner has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that post-closure care has not been in accordance with the approved post-closure plan. *(Solid Waste Management Division; 329 IAC 3.1-14-22; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-23 Use of a mechanism for financial assurance of both closure and post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.146

Sec. 23. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee that meets the specifications for the mechanism in sections 4 through 12 and 14 through 22 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established

and maintained for financial assurance of closure and post-closure care. *(Solid Waste Management Division; 329 IAC 3.1-14-23; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-24 Liability requirements

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.147

Sec. 24. (a) After July 1, 1982, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operation of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars ($1,000,000) per occurrence with an annual aggregate of at least two million dollars ($2,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 35 of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 36 of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (f) or by using the guarantee for liability coverage as specified in subsection (g).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (h).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (j).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(b) An owner or operator of a surface impoundment, landfill, or land treatment facility that is used to manage hazardous waste or a group of such facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operation of the facility or group of facilities. The owner or operator shall

have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars ($3,000,000) per occurrence with an annual aggregate of at least six million dollars ($6,000,000), exclusive of legal defense costs. An owner or operator who meets the requirements of this subsection may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least four million dollars ($4,000,000) per occurrence and eight million dollars ($8,000,000) annual aggregate. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 35 of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 36 of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (f) or by using the guarantee for liability coverage as specified in subsection (g).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (h).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (j).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(c) If an owner or operator demonstrates to the satisfaction of the commissioner that the levels of financial responsibility required by subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an exemption from the commissioner. The request for an exemption must be submitted in writing to the commissioner. If granted, the exemption will take the form of an adjusted level of required liability coverage, with such level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests an exemption to provide such technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subsection (a) or (b). The commissioner shall process an exemption request as if it was a permit modification request under 329 IAC 3.1-13-7 and subject to the procedures of 329 IAC

3.1-13-7. Notwithstanding any other provision, the commissioner may hold a public hearing whenever the commissioner finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to grant an exemption.

(d) If the commissioner determines that the levels of financial responsibility required by subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, the commissioner may require that an owner or operator of the facility comply with subsection (b). An owner or operator shall furnish to the commissioner, within ninety (90) days, any information that the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. The commissioner shall process an adjustment of the level of required coverage as if it was a permit modification request under 329 IAC 3.1-13 subject to the procedures of 329 IAC 3.1-13. Notwithstanding any other provision, the commissioner may hold a public hearing whenever the commissioner finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to adjust the level or type of required coverage.

(e) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.

(f) The requirements for the financial test for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes the financial test. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test.

(ii) Tangible net worth of at least ten million dollars ($10,000,000).

(iii) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(B) The owner or operator shall have the following:

(i) A current rating for the most recent bond issuance of:

(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(BB) Aaa, Aa, A, or Baa as issued by Moody's.

(ii) Tangible net worth of at least ten million dollars ($10,000,000).

(iii) Tangible net worth of at least six (6) times the amount of liability coverage to be demonstrated by this test.

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of his the total assets; or

(BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(2) As used in this subsection, "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required under subsections (a) through (b).

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 32 of this rule. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by sections 9 and 19 of this rule, and liability coverage, the owner or operator shall submit the letter specified in section 32 of this rule to cover both forms of financial responsibility. A separate letter as specified in section 31 of this rule is not required.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(5) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall obtain insurance, a letter-of-credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the commissioner within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the test requirements.

(6) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.

(g) The requirements for guarantee for liability coverage are as follows:

(1) Subject to subdivision (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as a guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsection (f)(1) through (f)(6). The wording of the guarantee must be identical to the wording specified in section 34 of this rule. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subsection (f)(3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall satisfy the judgment or pay the amount agreed to in settlement of claims up to the limits of coverage.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. This guarantee may not be terminated unless and until the commissioner approves in writing alternate liability coverage complying with 329 IAC 3.1-15-8 or this section.

(2) In the case of the corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the guarantor is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a guarantee executed as described in this section and section 34 of this rule is a legally valid and enforceable obligation in that state.

(3) In the case of the corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the non-U.S. corporation has identified a registered agent for service of process in Indiana and in the state in which it has its principal place of business; and

(B) the attorneys general or insurance commissioners of Indiana and the state in which the guarantor corporation has

its principal place of business have submitted a written statement to the commissioner that a guarantee executed as described in this section and section 34 of this rule is a legally valid and enforceable obligation in that state.

(h) The requirements for letter-of-credit for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and by submitting a copy of the letter-of-credit to the commissioner.

(2) The financial institution issuing the letter-of-credit must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(3) The wording of the letter-of-credit must be identical to the wording specified in section 37 of this rule.

(4) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter-of-credit, all amounts paid pursuant to a draft by the trustee of the standby trust must be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The wording of the standby trust fund must be identical to the wording specified in section 40 of this rule.

(i) The requirements for surety bond for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this section and by submitting a copy of the bond to the commissioner.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the current Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in section 38 of this rule.

(4) A surety bond may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the surety is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a surety bond executed as described in this subsection and section 38 of this rule is a legally valid and enforceable obligation in that state.

(j) The requirements for trust fund for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the commissioner.

(2) The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund or within one hundred twenty (120) days of the reduction, whichever is sooner, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of the liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. As used in this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden, nonsudden, or sudden and nonsudden occurrences required to be provided by the owner or operator by this subsection, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in section 39 of this rule.

(Solid Waste Management Division; 329 IAC 3.1-14-24; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1987; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-25 Incapacity of owners, operators, guarantors, or financial institutions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.148

Sec. 25. (a) An owner or operator shall notify the commissioner by certified mail of the commencement of a voluntary or

involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a guarantee, as specified in sections 9 and 19 of this rule, shall make such a notification if the guarantor is named as debtor as required under the terms of the guarantee in section 33 of this rule.

(b) An owner or operator, who fulfills the requirements of sections 4 through 12 of this rule, sections 14 through 22 of this rule, or sections 23 through 24 of this rule by obtaining a trust fund, surety bond, letter-of-credit, or insurance policy, shall be deemed to be without the required financial assurance or liability coverage in the event of:

(1) bankruptcy of the trustee or issuing institution; or

(2) suspension or revocation of:

(A) the authority of the trustee institution to act as trustee; or

(B) the institution issuing the surety bond, letter-of-credit, or insurance policy to issue such instruments.

The owner or operator shall establish other financial assurance or liability coverage within sixty (60) days after such an event. *(Solid Waste Management Division; 329 IAC 3.1-14-25; filed Jan 24, 1992, 2:00 p.m.: 15 IR 965; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1991; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-26 Wording of instrument; trust agreement

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(a)

Sec. 26. (a) A trust agreement for a trust fund, as specified in section 5 or 15 of this rule, 329 IAC 3.1-15-4(b), or 329 IAC 3.1-15-6(b) (see 329 IAC 3.1-15-10(a)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management, (IDEM), an agency of the State of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by the Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the IDEM.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IDEM commissioner from the Fund for closure and post-closure expenditures in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and

all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice of the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the IDEM, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IDEM commissioner, by certified mail within ten (10) days following the expiration of the thirty (30) day period after the anniversary of the establishment of the trust, if no payment is received from the Grantor during that period. After the pay-in-period is completed, the Trustee shall not be required to see a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in the defense of the Trustee in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-26 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a trust fund as specified in section 5 or 15 of this rule and 329 IAC 3.1-15-4(b) or 329 IAC 3.1-15-6(b):

Form of certification of acknowledgement.

State of_____

County of_____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of_____

County of_____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

State of:_____

County of residence:

Notary Public

Commission Expires:_____

(Solid Waste Management Division; 329 IAC 3.1-14-26; filed Jan 24, 1992, 2:00 p.m.: 15 IR 965; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1992; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-27 Wording of instrument; surety bonds

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(b)

Sec. 27. A surety bond guaranteeing payment into a trust fund, as specified in section 6 or 16 of this rule, 329 IAC 3.1-15-4(c), or 329 IAC 3.1-15-6(c) (see 329 IAC 3.1-15-10(b)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:_____

Effective date:_____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation:_____

Surety(ies): [name(s) and business address(es)]

EPA identification number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:_____

Total penal sum of bond: $_____

Surety's bond number:_____

We, the Principal and Surety(ies) hereto are firmly bound to the Indiana Department of Environmental Management (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71 and 329 IAC 3.1, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the IDEM or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, as applicable, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the IDEM commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-27 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address] _____
State of incorporation: _____
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s) and other information in the same manner as for Surety above.]

Bond premium: $_____

(Note: The corporate seal is not required by Indiana law.)

(Solid Waste Management Division; 329 IAC 3.1-14-27; filed Jan 24, 1992, 2:00 p.m.: 15 IR 969; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1995; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-28 Wording of instrument; performance bonds

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(c)

Sec. 28. A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 329 IAC 3.1-15-4(d) or 329 IAC 3.1-15-6(d) (see 329 IAC 3.1-15-10(c)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond
Date bond executed:_____
Effective date:_____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]
State of incorporation:_____
Surety(ies): [name(s) and business address(es)]:_____

EPA identification number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:_____

Total penal sum of bond:_____
Surety's bond number:_____

We, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Management of the State of Indiana (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors,

administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in 329 IAC 3.1-15, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the closure requirements of 329 IAC 3.1-9, for a facility for which this bond guarantees performance of closure, Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the post-closure requirements of 329 IAC 3.1-9 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance as specified in 329 IAC 3.1-15, and obtain written approval of such assurance from the IDEM commissioner during the ninety (90) days following receipt by both the Principal and the IDEM commissioner of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or

post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-28 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]_____
State of incorporation:_____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]_____
[Corporate seal]:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]
Bond premium: $_____

(Note: The corporate seal is not required by Indiana law.)

(Solid Waste Management Division; 329 IAC 3.1-14-28; filed Jan 24, 1992, 2:00 p.m.: 15 IR 970; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1996; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-29 Wording of instrument; letter-of-credit

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(d)

Sec. 29. A letter-of-credit, as specified in section 7 or 17 of this rule, 329 IAC 3.1-15-4(e), or 329 IAC 3.1-15-6(e) (see 329 IAC 3.1-15-10(d)), must be worded as follows except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Irrevocable Standby Letter-of-Credit
Commissioner
Indiana Department of Environmental Management

Dear Sir or Madam: We hereby establish our irrevocable standby letter-of-credit no. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of:

(1) your sight draft, bearing reference to this letter-of-credit no. _____; and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the environmental management laws as defined at IC 13-11-2-71 as amended.".

This letter-of-credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter-of-credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter-of-credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such

draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter-of-credit is identical to the wording specified in 329 IAC 3.1-14-29 as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "Article 5 of the Uniform Commercial Code as adopted in IC 26-1-5.1-101 through IC 26-1-5.1-117" or "the current edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce"]. *(Solid Waste Management Division; 329 IAC 3.1-14-29; filed Jan 24, 1992, 2:00 p.m.: 15 IR 972; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1998; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-30 Wording of instrument; certificate of insurance

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(e)

Sec. 30. A certificate of insurance, as specified in section 8 or 18 of this rule, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f) (see 329 IAC 3.1-15-10(e)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure or Post-Closure Care

Name and Address of Insurer (herein called the "Insurer"):_____

Name and Address of Insured (herein called the "Insured"):_____

Facilities Covered: [List for each facility: the EPA identification number, name, address, and the amount of insurance for closure and/or the amount for post-closure. (These amounts for all facilities covered must total the face amount shown below.)]

Face Amount:_____

Policy Number:_____

Effective Date:_____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 329 IAC 3.1-14-8, 329 IAC 3.1-14-18, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f) (see 329 IAC 3.1-15-10(e)) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the Insurer agrees to furnish to the IDEM commissioner a duplicate original of the policy listed above including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 329 IAC 3.1-14-30 as such rule was constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:_____

[Date]

(Solid Waste Management Division; 329 IAC 3.1-14-30; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1998; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-31 Wording of instrument; chief financial officer letter for closure, post-closure, or closure and post-closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(f)

Sec. 31. A letter from the chief financial officer, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g) (see 329 IAC 3.1-15-10(f)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to commissioner of the Indiana Department of Environmental Management]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following four (4) paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.
2. This firm guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert either or both, as applicable: "the direct or higher tier parent corporation of the owner or operator" or "owned by the same parent corporation as the parent corporation of the owner or operator and receiving the following value in consideration of this guarantee _____."].
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.
4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to the Environmental Protection Agency (EPA) or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A), 329 IAC 3.1-15-6(g)(1)(A), 329 IAC 3.1-14-9(a)(1), or 329 IAC 3.1-14-19(a)(1) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B), 329 IAC 3.1-15-6(g)(1)(B), 329 IAC 3.1-14-9(a)(2), or 329 IAC 3.1-14-19(a)(2) are used.]

Alternative I

1.	Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above].	$_____
*2.	Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4].	$_____
*3.	Tangible net worth.	$_____
*4.	Net worth.	$_____
*5.	Current assets.	$_____
*6.	Current liabilities.	$_____
7.	Net working capital [line 5 minus line 6].	$_____
*8.	The sum of net income plus depreciation, depletion, and amortization.	$_____
*9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).	$_____

		YES	NO
10.	Is line 3 at least $10 million?		
11.	Is line 3 at least 6 times line 1?		
12.	Is line 7 at least 6 times line 1?		
*13.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.		
14.	Is line 9 at least 6 times line 1?		
15.	Is line 2 divided by line 4 less than 2.0?		
16.	Is line 8 divided by line 2 greater than 0.1?		
17.	Is line 5 divided by line 6 greater than 1.5?		

Alternative II

1.	Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above].	$_____
2.	Current bond rating of most recent issuance of this firm and name of rating service.	
3.	Date of issuance of bond.	
4.	Date of maturity of bond.	
*5.	Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line).	$_____
*6.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).	$_____

		YES	NO
7.	Is line 5 at least $10 million?		
8.	Is line 5 at least 6 times line 1?		
*9.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.		
10.	Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-31 as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(Solid Waste Management Division; 329 IAC 3.1-14-31; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1999; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-32 Wording of instrument; chief financial officer letter for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(g)

Sec. 32. A letter from the chief financial officer, as specified in section 24 of this rule or 329 IAC 3.1-15-8(e) (see 329 IAC 3.1-15-10(g)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

[Address to commissioner of the Indiana Department of Environmental Management, State of Indiana]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following paragraphs regarding facilities and liability coverage. For each facility, include its EPA identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden", "nonsudden", or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified

in 329 IAC 3.1-14 or 329 IAC 3.1-15.

The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert either or both, as applicable: "the direct or higher tier parent corporation of the owner or operator" or "owned by the same parent corporation as the parent corporation of the owner or operator and receiving the following value in consideration of this guarantee _____."].

[If you are using the financial test to demonstrate coverage of both liability and closure and/or post-closure care, fill in the following four (4) paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.
2. The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:_____.
4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to the Environmental Protection Agency (EPA) or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage ONLY for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-8(e)(1)(A) or 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-8(e)(1)(B) or 329 IAC 3.1-14-24(f)(1)(B) are used.]

Alternative I

1.	Amount of annual aggregate liability coverage to be demonstrated.	$_____
*2.	Current assets.	$_____
*3.	Current liabilities.	$_____
4.	Net working capital (line 2 minus line 3).	$_____
*5.	Tangible net worth.	$_____
*6.	If less than 90% of assets are located in the U.S., give total U.S. assets.	$_____

		YES	NO
7.	Is line 5 at least $10 million?		
8.	Is line 4 at least 6 times line 1?		
9.	Is line 5 at least 6 times line 1?		
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.		
11.	Is line 6 at least 6 times line 1?		

Alternative II

1.	Amount of annual aggregate liability coverage to be demonstrated.	$_____
2.	Current bond rating of most recent issuance and name of rating service.	
3.	Date of issuance of bond.	
4.	Date of maturity of bond.	
*5.	Tangible net worth.	$_____
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$_____

		YES	NO
7.	Is line 5 at least $10 million?		
8.	Is line 5 at least 6 times line 1?		
*9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.		
10.	Is line 6 at least 6 times line 1?		

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage AND closure and/or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A) or 329 IAC 3.1-15-6(g)(1)(A) and 329 IAC 3.1-15-8(e)(1)(A) are used or if 329 IAC 3.1-14-9(a)(1) or 329 IAC 3.1-14-19(a)(1) and 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B) or 329 IAC 3.1-15-6(g)(1)(B) and 329 IAC 3.1-15-8(e)(1)(B) are used or if 329 IAC 3.1-14-9(a)(2) or 329 IAC 3.1-14-19(a)(2) and 329 IAC 3.1-14-24(f)(1)(B) are used.]

Alternative I

1.	Sum of current closure and post-closure cost estimates (total of all cost estimates listed above).	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated.	$_____
3.	Sum of lines 1 and 2.	$_____
*4.	Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6).	$_____
*5.	Tangible net worth.	$_____
*6.	Net worth.	$_____
*7.	Current assets.	$_____
*8.	Current liabilities.	$_____
9.	Net working capital (line 7 minus line 8).	$_____
*10.	The sum of net income plus depreciation, depletion, and amortization.	$_____
*11.	Total assets in U.S. (required only if less than 90% of assets located in the U.S.).	$_____

		YES	NO
12.	Is line 5 at least $10 million?		
13.	Is line 5 at least 6 times line 3?		
14.	Is line 9 at least 6 times line 3?		
*15.	Are at least 90% of assets located in the U.S.? If not, complete line 16.		
16.	Is line 11 at least 6 times line 3?		
17.	Is line 4 divided by line 6 less than 2.0?		
18.	Is line 10 divided by line 4 greater than 0.1?		
19.	Is line 7 divided by line 8 greater than 1.5?		

Alternative II

1.	Sum of current closure and post-closure cost estimates (total of all cost estimates listed above).	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated.	$_____
3.	Sum of lines 1 and 2.	$_____
4.	Current bond rating of most recent issuance and name of rating service.	
5.	Date of issuance of bond.	
6.	Date of maturity of bond.	
*7.	Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements, you may add that portion to this line).	$_____

*8.	Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).	$_____
		YES NO
9.	Is line 7 at least $10 million?	
10.	Is line 7 at least 6 times line 3?	
*11.	Are at least 90% of assets located in the U.S.? If not, complete line 12.	
12.	Is line 8 at least 6 times line 3?	

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-32 as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(Solid Waste Management Division; 329 IAC 3.1-14-32; filed Jan 24, 1992, 2:00 p.m.: 15 IR 975; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2000; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-33 Wording of instrument; guarantee for closure or post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(h)(1)

Sec. 33. A guarantee, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g) (see 329 IAC 3.1-15-10(h)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert state's name], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one (1) of the following: "our subsidiary" or "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"] to the Department of Environmental Management of the State of Indiana (IDEM).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3.1-14-9 and 329 IAC 3.1-14-19 or 329 IAC 3.1-15-4(g) and 329 IAC 3.1-15-6(g).
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address. Indicate for each whether guarantee is for closure, post-closure, or both.]
3. "Closure plan" and "post-closure plan" as used below refer to the plans maintained as required by 329 IAC 3.1-14 and 329 IAC 3.1-15 for the closure and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to IDEM that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care", or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the IDEM commissioner and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the IDEM commissioner by certified mail, of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the IDEM commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure or post-closure care, the guarantor shall establish alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 329 IAC 3.1-10 or 329 IAC 3.1-9.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 329 IAC 3.1-14 and 329 IAC 3.1-15 for the above-listed facilities except as provided in paragraph 10 of this guarantee.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the IDEM commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the IDEM commissioner approves, alternate closure, post-closure care, or closure and post-closure care coverage complying with 329 IAC 3.1-14 or 329 IAC 3.1-15, or both.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, and obtain written approval of such assurance from the IDEM commissioner within ninety (90) days after a notice of cancellation by the guarantor is received by the IDEM commissioner from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the IDEM commissioner or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3.1-14-33 as such rule was constituted on the date first above written.

Effective date:_____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:_____

(Solid Waste Management Division; 329 IAC 3.1-14-33; filed Jan 24, 1992, 2:00 p.m.: 15 IR 978; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2002; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-34 Wording of instrument; guarantee for liability coverage

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

Affected: IC 13-22-2; 40 CFR 264.151(h)(2)

Sec. 34. (a) The guarantee, as specified in section 24(g) of this rule or 329 IAC 3.1-15-8(f) (see 329 IAC 3.1-15-10(h)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States, insert, "the State of_____" and insert the name of the state, or, if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one (1) of the following: "our subsidiary", or "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3.1-15-8(f) and 329 IAC 3.1-14-24(g).
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address, and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each state.] This guarantee satisfies third party liability requirements for hazardous waste under IC 13-11-2-71 for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.
3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s), up to the limits of coverage identified above.
4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the commissioner and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.
5. The guarantor agrees to notify the commissioner by certified mail of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
6. Guarantor agrees that within thirty (30) days after being notified by the commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in 329 IAC 3.1-15-8 or 329 IAC 3.1-14-24, in the name of [owner or operator], unless [owner or operator] has done so.
7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24, provided that such modification shall become effective only if the commissioner does not disapprove the modification within thirty (30) days of receipt of notification of the modification.
8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.
9. Guarantor may terminate this guarantee by sending notice by certified mail to the commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the commissioner approves alternate liability coverage complying with 329 IAC 3.1-15-8 and/or 329 IAC 3.1-14-24.
10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
12. Guarantor shall satisfy a third party liability claim only on receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the principal and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's hazardous waste treatment, storage, or disposal facility] must be paid in the amount of $_____.

[Signature]
Principal_____
(Notary) Date_____
[Signature or signatures]
Claimant or claimants_____
(Notary) Date_____

(b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

13. In the event of the combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

(b) Such obligation does not apply to any of the following:

(1) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(2) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(3) Bodily injury to:

(A) an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(B) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of, employment by [insert owner or operator].

(4) Subdivision (3) applies:

(A) whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in subdivision (3).

(5) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(6) Property damage to any of the following:

(A) Any property owned, rented, or occupied by [insert owner or operator].

(B) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises.

(C) Property loaned to [insert owner or operator].

(D) Personal property in the care, custody, or control of [insert owner or operator].

(E) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3.1-14-34 as such rule was constituted on the date shown immediately below.

Effective date:_____
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:_____

(Solid Waste Management Division; 329 IAC 3.1-14-34; filed Jan 24, 1992, 2:00 p.m.: 15 IR 978; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2003; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-35 Wording of instrument; hazardous waste facility liability endorsement form

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(i)

Sec. 35. A hazardous waste facility liability endorsement, as required in section 24 of this rule or 329 IAC 3.1-15-8 (see 329 IAC 3.1-15-10(i)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insurer's obligation to demonstrate financial responsibility under 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences". If coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrence is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with this paragraph are hereby amended to conform with the following:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated as specified in 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8.

(c) Whenever requested by the commissioner of the Indiana Department of Environmental Management (IDEM), the Insurer agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, a parent corporation providing insurance coverage for its subsidiary, or a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the IDEM commissioner.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the IDEM commissioner.

Attached to and forming part of policy number _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 19___. The effective date of said policy is _____ day of ____, 19_____.

I hereby certify that the wording of this endorsement is identical to the wording specified in 329 IAC 3.1-14-35 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of representative]

(Solid Waste Management Division; 329 IAC 3.1-14-35; filed Jan 24, 1992, 2:00 p.m.: 15 IR 979; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2005; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-36 Wording of instrument; hazardous waste facility certificate of liability insurance

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(j)

Sec. 36. A certificate of liability insurance, as required in section 24 of this rule or 329 IAC 3.1-15-8 (see 329 IAC 3.1-15-10(j)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. [Name of Insurer], [the "Insurer"], of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of Insured], [the "Insured"], of [address of Insured] in connection with the Insured's obligation to demonstrate financial responsibility under 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences". If coverage is for multiple facilities and the coverage is different for different facilities, indicate which facility(ies) are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated as specified in 329 IAC 3.1-14-24(f) or 329 IAC 3.1-15-8(e).

(c) Whenever requested by the commissioner of the Department of Environmental Management of the State of Indiana (IDEM), the Insurer agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the Insured, a parent corporation providing insurance coverage for its subsidiary, or a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the IDEM commissioner.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the IDEM commissioner.

I hereby certify that the wording of this instrument is identical to the wording specified in 329 IAC 3.1-14-36 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized representative of [name of Insurer]

[Address of representative]

(Solid Waste Management Division; 329 IAC 3.1-14-36; filed Jan 24, 1992, 2:00 p.m.: 15 IR 980; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2006; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-37 Wording of instrument; letter-of-credit for liability coverage

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

Affected: IC 13-22-2; 40 CFR 264.151(k)

Sec. 37. A letter-of-credit, as required in section 24(h) of this rule or 329 IAC 3.1-15-8(g) (see 329 IAC 3.1-15-10(k)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter-of-Credit

Name and Address of Issuing Institution_____

Commissioner

Indiana Department of Environmental Management

Dear Sir or Madam: We hereby establish our irrevocable standby letter-of-credit no. _____ in the favor of ["any and all third party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____ for sudden accidental occurrences, for third party liability awards or settlements, or for sudden accidental occurrences and third party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____ for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter-of-credit no. _____ and [insert either of the following, 1. or 2., if the letter-of-credit is being used without a standby trust fund]:

1. A signed certification reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a ["sudden" or "nonsudden"] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars $_____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

(i) an employee of [insert principal] arising from and in the course of employment by [insert principal]; or

(ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies whether [insert principal] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

(i) Any property owned, rented, or occupied by [insert principal].

(ii) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises.

(iii) Property loaned to [insert principal].

(iv) Personal property in the care, custody, or control of [insert principal].

(v) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations if the property damage arises out of these operations.

[Signature]

Grantor_____

[Signature or signatures]

Claimant or Claimants_____.

2. A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter-of-credit is effective as of [date] and will expire on [date at least one (1) year later], but such expiration date must be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date unless, at least one hundred twenty (120) days before the current expiration date, we notify you, the IDEM commissioner, and [owner or operator] by certified mail that we have decided not to extend this letter-of-credit beyond the current expiration date.

Whenever this letter-of-credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such

draft upon presentation to us.

Insert the following language if a standby trust fund is not being used:

"In the event that this letter-of-credit is used in combination with another mechanism for liability coverage, this letter-of-credit must be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter-of-credit is identical to the wording specified in 329 IAC 3.1-14-37 as such rule was constituted on the date shown immediately below.

[Signature and title of official or officials of issuing institution]

[Date]

This credit is subject to [insert "the current edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"]. *(Solid Waste Management Division; 329 IAC 3.1-14-37; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2006; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-38 Wording of instrument; surety bond for liability coverage

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

Affected: IC 13-22-2; 40 CFR 264.151(l)

Sec. 38. A surety bond, as required in section 24(i) of this rule or 329 IAC 3.1-15-8(h) (see 329 IAC 3.1-15-10(l)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [insert number]

Parties: [insert name and address of owner or operator], Principal, incorporated in [insert state of incorporation] of [insert city and state of Principal's place of business] and [insert name and address of Surety Company or Companies], Surety Company or Companies, of [insert Surety's or Sureties' place of business].

EPA identification number, name, and address for each facility guaranteed by this bond:_____

For Sudden Accidental Occurrences:

Penal Sum Per Occurrence: [insert amount]

Annual Aggregate: [insert amount]

For Nonsudden Accidental Occurrences:

Penal Sum Per Occurrence: [insert amount]

Annual Aggregate: [insert amount]

Purpose: This is an agreement between the Surety or Sureties and the Principal under which the Surety or Sureties, its successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury, property damage, or bodily injury and property damage to third parties caused by ["sudden", "nonsudden", or "sudden and nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein and subject to the governing provisions and the following conditions:

Governing provisions as follows:

1. Section 3004 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq.

2. 329 IAC 3.1-14-24, 329 IAC 3.1-15-8, or 329 IAC 3.1-14-24 and 329 IAC 3.1-15-8.

Conditions as follows:

1. The Principal is subject to the applicable governing provisions that require the Principal to have and to maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden", "nonsudden", or "sudden and nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

(i) an employee of [insert Principal] arising from and in the course of employment by [insert Principal]; or

(ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal].

This exclusion applies whether [insert Principal] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

(i) Any property owned, rented, or occupied by [insert Principal].

(ii) Premises that are sold, given away, or abandoned by [insert Principal] if the property damage arises out of any part of those premises.

(iii) Property loaned to [insert Principal].

(iv) Personal property in the care, custody, or control of [insert Principal].

(v) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations if the property damage arises out of these operations.

2. This bond assures that the Principal will satisfy valid third party liability claims as described in condition 1.

3. If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety or Sureties becomes liable on this bond obligation.

4. The Surety or Sureties shall satisfy a third party liability claim only upon the receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the Principal and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a ["sudden" or "nonsudden"] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars $_____.

[Signature]

Principal_____

[Notary]

Date_____

[Signature or signatures]

Claimant or claimants_____

[Notary]

Date_____.

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

5. In the event of the combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

6. The liability of the Surety or Sureties must not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments will amount in the aggregate to the penal sum of the bond. In no event must the obligation of the Surety or Sureties hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety or Sureties furnishes notice to the commissioner of the Indiana Department of Environmental Management (IDEM) forthwith of all claims filed and payments made by the Surety or Sureties under this bond.

7. The Surety or Sureties may cancel the bond by sending notice of cancellation by certified mail to the IDEM commissioner provided, however, that cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal and the IDEM commissioner, as evidenced by the return receipt.

8. The Principal may terminate this bond by sending written notice to the Surety or Sureties and to the IDEM commissioner.

9. The Surety or Sureties hereby waives notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment must in any way alleviate its obligation on this bond.

10. This bond is effective from [insert date], 12:01 a.m., standard time, at the address of the Principal as stated herein and must continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety or Sureties have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety or Sureties and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-38 as such rule was constituted on the date this bond was executed.

PRINCIPAL
[Signature or signatures]
[Name or names]
[Title or titles]
[Corporate seal]
CORPORATE SURETY OR SURETIES
[Name and address]
State of incorporation:_____
Liability limit: $_____
[Signature or signatures]
[Name or names and title or titles]
[Corporate seal]
[For every co-surety, provide signature or signatures and other information in the same manner as for Surety above.]
Bond premium: $_____
(Note: The corporate seal is not required by Indiana law)

(Solid Waste Management Division; 329 IAC 3.1-14-38; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2008; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-39 Wording of instrument; trust agreement for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(m)

Sec. 39. (a) A trust agreement, as required in section 24(j) of this rule or 329 IAC 3.1-15-8(i) (see 329 IAC 3.1-15-10(m)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden, nonsudden, or sudden and nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this

Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility or facilities and the amount of liability coverage, or portions thereof, if more than one (1) instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of any and all third parties injured or damaged by [sudden, nonsudden, or sudden and nonsudden] accidental occurrences arising from the operation of the facility or facilities covered by this guarantee in the amounts of _____ [up to one million dollars ($1,000,000)] per occurrence and _____ [up to two million dollars ($2,000,000)] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars ($3,000,000)] per occurrence and _____[up to six million dollars ($6,000,000)] annual aggregate for nonsudden occurrences except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

(i) an employee of [insert Grantor] arising from and in the course of employment by [insert Grantor]; or

(ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies whether [insert Grantor] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

(i) Any property owned, rented, or occupied by [insert Grantor].

(ii) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises.

(iii) Property loaned to [insert Grantor].

(iv) Personal property in the care, custody, or control of [insert Grantor].

(v) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund will be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund must be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by IDEM.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making

payments from the Fund only upon receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the Grantor and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars $_____.

[Signature]

Grantor_____

[Signature or signatures]

Claimant or claimants_____.

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund must consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), must not be acquired or held unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest therein.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer, from time to time, any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any

securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee must at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund must be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee must be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund must be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement must not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section must be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee must be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee must be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or IDEM or both except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount or amounts thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund or within one hundred twenty (120) days of the payout, whichever is sooner, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor neither makes payments to the Trustee nor provides the Trustee with such proof, the Trustee shall, within ten (10) working days after the anniversary date of the establishment of the Fund, provide a written notice of nonpayment to the commissioner.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust must be irrevocable and must continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, must be delivered to the Grantor.

The commissioner will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement must be administered, construed, and enforced according to the laws of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement must not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-39 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a trust fund as specified in 329 IAC 3.1-14-24(j) or 329 IAC 3.1-15-8(i):

Form of certification of acknowledgement.

State of_____

County of_____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of_____

County of_____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to

be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

State of:_____

County of residence:_____

Notary Public

Commission Expires:_____.

(Solid Waste Management Division; 329 IAC 3.1-14-39; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2009; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-40 Wording of instrument; standby trust agreement for liability coverage

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

Affected: IC 13-22-2; 40 CFR 264.151(n)

Sec. 40. (a) A standby trust agreement, as required in section 24(h) of this rule or 329 IAC 3.1-15-8(g) (see 329 IAC 3.1-15-10(n)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden, nonsudden, or sudden and nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter-of-credit may be deposited to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility or facilities and the amount of liability coverage, or portions thereof, if more than one (1) instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, the "Fund", for the benefit of any and all third parties injured or damaged by [sudden, nonsudden, or sudden and nonsudden] accidental occurrences arising from the operation of the facility or facilities covered by this guarantee in the amounts of _____ [up to one million dollars ($1,000,000)] per occurrence and _____ [up to two million dollars ($2,000,000)] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars ($3,000,000)] per occurrence and _____ [up to six million dollars ($6,000,000)] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of

liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

(i) an employee of [insert Grantor] arising from and in the course of employment by [insert Grantor]; or

(ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies whether [insert Grantor] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

(i) Any property owned, rented, or occupied by [insert Grantor].

(ii) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises.

(iii) Property loaned to [insert Grantor].

(iv) Personal property in the care, custody, or control of [insert Grantor].

(v) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund will be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter-of-credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits therein, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund must be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by IDEM.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter-of-credit described in Schedule B and by making payments from the Fund only upon receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the Grantor and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars $_____.

[Signature]

Grantor_____

[Signature or signatures]

Claimant or claimants_____.

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund must consist of the proceeds from the letter-of-credit drawn upon by the Trustee in accordance with the requirements of 329 IAC 3.1-14-37 and Section 4 of this

Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), must not be acquired or held, unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest therein.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee must at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund must be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee must be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement must not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section must be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions by the Grantor to the Trustee must be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee must be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or IDEM or both except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this trust must be irrevocable and must continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, must be delivered to the Grantor.

The commissioner will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement must be administered, construed, and enforced according to the laws of Indiana.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement must not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-40 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a standby trust fund as specified in 329 IAC 3.1-14-24(h) or 329 IAC 3.1-15-8(g):

Form of certification of acknowledgement.

State of_____

County of_____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of_____

County of_____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

State of:_____

County of residence:_____

Notary Public

Commission Expires:_____.

(Solid Waste Management Division; 329 IAC 3.1-14-40; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2013; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 15. Financial Requirements for Final (State) Permitted Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-15-1 Applicability

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

Affected: IC 13-22-2; 40 CFR 264.140

Sec. 1. (a) Sections 3 through 4 and 8 through 10 of this rule apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or are excluded from permit requirements in 40 CFR 264.1.

(b) Sections 5 through 6 of this rule apply only to owners and operators of:

(1) disposal facilities;

(2) piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 40 CFR 264.228 and 40 CFR 264.258;

(3) tank systems that are required under 40 CFR 264.197 to meet the requirements for landfills; and

(4) containment buildings that are required under 40 CFR 264.1102 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this rule. *(Solid Waste Management Division; 329 IAC 3.1-15-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 981; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3362; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-15-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.141

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

(b) "Closure plan" means the plan for closure prepared in accordance with 40 CFR 264.112.

(c) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with section 3(a) through 3(c) of this rule.

(d) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with section 5(a) through 5(c) of this rule.

(e) "Parent corporation" means a corporation that directly owns at least fifty percent (50%) of the voting stock of the corporation that is the facility owner or operator; the corporation that is the facility owner or operator is deemed a subsidiary of the parent corporation.

(f) "Post-closure plan" means the plan for post-closure care prepared in accordance with 40 CFR 264.117 through 40 CFR 264.120.

(g) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage and are intended to assist in the understanding of this rule and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(4) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(5) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(6) "Net working capital" means current assets minus current liabilities.

(7) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(8) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as good will and rights to patents or royalties.

(h) In the liability insurance requirements in section 8 of this rule, the terms "bodily injury" and "property damage" must have the meanings given these terms by applicable state law. However, these terms do not include those liabilities, which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The board intends the meanings of other terms used in the liability insurance requirements in section 8 of this rule to be consistent with their common meanings within the insurance industry. The following definitions are terms intended to assist in the understanding of this rule and are not intended to limit meanings in a way that conflicts with general insurance industry usage:

(1) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(4) "Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

(Solid Waste Management Division; 329 IAC 3.1-15-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 981; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2017; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-3 Cost estimate for closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.142

Sec. 3. (a) The owner or operator shall keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 264.111 through 40 CFR 264.115 and applicable closure requirements in 40 CFR 264.178, 40 CFR 264.197, 40 CFR 264.228, 40 CFR 264.258, 40 CFR 264.280, 40 CFR 264.310, 40 CFR 264.351, 40 CFR 264.601 through 40 CFR 264.603, and 40 CFR 264.1102 as follows:

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. See 40 CFR 264.112(b).

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of "parent corporation" in section 2(e) of this rule. The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous waste if applicable under 40 CFR 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero (0) cost for hazardous wastes, or nonhazardous waste if applicable under 40 CFR 264.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 4 of this rule. For owners and operators using the financial test or guarantee, the closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the commissioner as specified in section 4(g)(3) of this rule. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, as follows:

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than thirty (30) days after the commissioner has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted closure cost estimate.

(Solid Waste Management Division; 329 IAC 3.1-15-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 982; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3362; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-4 Financial assurance for closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; IC 13-30-3; 40 CFR 264.143

Sec. 4. (a) An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (b) through (g).

(b) The requirements for a closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner

at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial final state permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, recovery, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE	=	The current closure cost estimate.
CV	=	The current value of the trust fund.
Y	=	The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund as specified in this subsection, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE	=	The current closure cost estimate.
CV	=	The current value of the trust fund.
Y	=	The number of years remaining in the pay-in-period.

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section or in 329 IAC 3.1-14, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-5 as applicable.

(6) After the pay-in-period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate; or

(B) obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.
(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.
(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for partial or final closure activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies, in writing, if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.
(11) The commissioner shall agree to termination of the trust when:
(A) the owner or operator substitutes alternate financial assurance as specified in this section; or
(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).
(c) The requirements for a surety bond guaranteeing payment into a closure trust fund are as follows:
(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:
(A) authorized to do business in Indiana; and
(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.
(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:
(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
(B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
(i) Payments into the trust fund as specified in subsection (b).
(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.
(iii) Annual valuations as required by the trust agreement.
(iv) Notices of nonpayment as required by the trust agreement.
(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:
(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that

the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond, the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue a letter-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.

(3) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date, and provide the following information:

(A) The EPA identification number, name, and address of the facility.

(B) The amount of funds assured for closure of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty

(120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the commissioner may draw on the letter-of-credit.

(9) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution of the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and to obtain written approval of such assurance from the commissioner.

(10) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy also must guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the commissioner shall instruct the insurer to make reimbursements in such amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure

plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) the commissioner deems the facility abandoned;

(B) the permit is terminated or revoked or a new permit is denied;

(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11, United States Code; or

(E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(10) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Two (2) of the following three (3) ratios:

(AA) A ratio of total liabilities to net worth less than two (2.0).

(BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(B) The owner or operator shall have the following:

(i) A current rating for the most recent bond issuance of:

(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(BB) Aaa, Aa, A, or Baa as issued by Moody's.

(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(2) As used in subdivision (1), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

(8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion

or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall perform final closure in accordance with the closure plan and other permit requirements or establish a trust fund as specified in subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.

(C) If the owner or operator fails to:

(i) provide alternate financial assurance as specified in this section; and

(ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that

closure has not been in accordance with the approved closure plan. *(Solid Waste Management Division; 329 IAC 3.1-15-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 983; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2018; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2438)*

329 IAC 3.1-15-5 Cost estimate for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.144

Sec. 5. (a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, landfill unit, surface impoundment, or waste pile, required under 40 CFR 264.228 and 40 CFR 264.258 to prepare a contingent closure and post-closure plan shall keep at the facility a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in 40 CFR 264.117 through 40 CFR 264.120, 40 CFR 264.228, 40 CFR 264.258, 40 CFR 264.280, 40 CFR 264.310, 40 CFR 264.603, and the following:

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 2(e) of this rule.)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 40 CFR 264.117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 6 of this rule. For owners or operators using the financial test or guarantee, the post-closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before the submission of updated information to the commissioner as specified in section 6(g)(5) of this rule. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate within thirty (30) days after the commissioner has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest post-closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted post-closure cost estimate. *(Solid Waste Management Division; 329 IAC 3.1-15-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 990; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-15-6 Financial assurance for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.145

Sec. 6. (a) The owner or operator of a hazardous waste management unit subject to the requirements of section 5 of this rule shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty (60) days prior to the initial receipt of hazardous waste or the effective date of this rule, whichever is later. The owner or operator shall

choose from the options in this section.

(b) The requirements for a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement in accordance with 329 IAC 3.1-14-26(b). Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the first final (state) permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE = The current post-closure cost estimate.

CV = The current value of the trust fund.

Y = The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund as specified in this section, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE = The current post-closure cost estimate.

CV = The current value of the trust fund.

Y = The number of years remaining in the pay-in-period.

(4) The owner or operator may accelerate payments into the trust fund, or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section or 329 IAC 3.1-14-15, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-15 as applicable.

(6) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the

trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or

(B) obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(10) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(12) The commissioner shall agree to termination of the trust when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure

of the facility.

(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall:

(A) perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

(B) provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval

of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond, the surety shall perform post-closure care in accordance with the post-closure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) During the period of post-closure care, the commissioner may approve a decrease in the penal sum if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) The surety shall not be liable for deficiencies in the performance of post-closure care by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a post-closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. This issuing institution must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.

(3) The owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(A) The EPA identification number, name, and address of the facility.

(B) The amount of funds assured for post-closure care of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(9) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.

(10) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the commissioner.

(11) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for post-closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility

whenever the post-closure period begins. The policy also must guarantee that once post-closure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure activities, the commissioner shall instruct the insurer to make reimbursement in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article, warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) the commissioner deems the facility abandoned;

(B) the permit is terminated or revoked or a new permit is denied;

(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11, United States Code; or

(E) the premium due is paid.

(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.

(11) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Two (2) of the following three (3) ratios:

(AA) A ratio of total liabilities to net worth less than two (2.0).

(BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(B) The owner or operator shall have the following:

(i) A current rating for the most recent bond issuance of:

(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(BB) Aaa, Aa, A, or Baa as issued by Moody's.

(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(2) As used in subdivision (1), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance

within one hundred twenty (120) days after the end of such fiscal year.

(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

(8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other permit requirements or establish a trust fund as specified in subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(C) If the owner or operator fails to:

(i) provide alternate financial assurance as specified in this section; and

(ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this

section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certification from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the commissioner shall notify the owner or operator that the owner or operator is no longer required to maintain financial assurance for post-closure care of that unit, unless the commissioner has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The commissioner shall provide the owner or operator with a detailed written statement of any such reason that post-closure care has not been in accordance with the approved post-closure plan. *(Solid Waste Management Division; 329 IAC 3.1-15-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 991; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2445)*

329 IAC 3.1-15-7 Use of a mechanism for financial assurance of both closure and post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.146

Sec. 7. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee that meets the specifications for the mechanism in both sections 4 and 6 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and post-closure care. *(Solid Waste Management Division; 329 IAC 3.1-15-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 998; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2034; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-15-8 Liability requirements

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.147

Sec. 8. (a) An owner or operator of a hazardous waste treatment, storage, recovery, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars ($1,000,000) per occurrence with an annual aggregate of at least two million dollars ($2,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 10(i) of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 10(j) of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of

insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (e) or by using the guarantee for liability coverage as specified in subsection (f).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (g).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (h).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (i).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify the other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(b) An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste or a group of such facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars ($3,000,000) per occurrence with an annual aggregate of at least six million dollars ($6,000,000), exclusive of legal defense costs. An owner or operator who meets the requirements of this subsection may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least four million dollars ($4,000,000) per occurrence and eight million dollars ($8,000,000) annual aggregate. This liability coverage may be demonstrated in one (1) of the following six (6) ways as specified in subdivisions (1) through (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 10(i) of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 10(j) of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (e) or by using the guarantee for liability coverage as specified in subsection (f).
(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (g).
(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (h).
(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (i).
(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify the other assurance as excess coverage.
(7) An owner or operator shall notify the commissioner in writing within thirty (30) days whenever any of the following occurs:
(A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions (1) through (6).
(B) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under subdivisions (1) through (6).
(C) A final court order establishing a judgment for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions (1) through (6).
(8) If an owner or operator demonstrates to the satisfaction of the commissioner that the levels of financial responsibility required by subsection (a) or this subsection are not consistent with the degree and duration of risk associated with treatment, storage, recovery, or disposal at the facility or group of facilities, the owner or operator may obtain an exemption from the commissioner. The request for exemption must be submitted to the commissioner as part of the application under 40 CFR 270.14 for a facility that does not have a permit, or pursuant to the procedures for permit modification under 329 IAC 3.1-13-7 for a facility that has a permit. If granted, the exemption must take the form of an adjusted level of required liability coverage, with such level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests an exemption to provide such technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subsection (a) or this subsection. Any request for an exemption for a permitted facility must be treated as a request for a permit modification under 40 CFR 270.41(a)(5) and 329 IAC 3.1-13-7.

(c) If the commissioner determines that the levels of financial responsibility required by subsection (a) or (b) are not sufficient for the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, the commissioner may require that an owner or operator of the facility comply with subsection (b). An owner or operator shall furnish to the commissioner, within ninety (90) days, any information that the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit must be treated as a permit modification under 329 IAC 3.1-13-7.

(d) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.

(e) The requirements for a financial test for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test.

(ii) Tangible net worth of at least ten million dollars ($10,000,000).

(iii) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(B) The owner or operator shall have the following:

(i) A current rating for the most recent bond issuance of:

(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(BB) Aaa, Aa, A, or Baa as issued by Moody's.

(ii) Tangible net worth of at least ten million dollars ($10,000,000).

(iii) Tangible net worth at least six (6) times the amount of liability coverage to be demonstrated by this test.

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(2) As used in subdivision (1), "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required under subsections (a) through (b).

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(g) of this rule. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by sections 4(g) and (6)(g) of this rule, and liability coverage, the owner or operator shall submit the letter specified in section 10(g) of this rule to cover both forms of financial responsibility. A separate letter as specified in section 10(f) of this rule is not required.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall obtain insurance,

a letter-of-credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the commissioner within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the test requirements.

(7) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subdivision (3)(B).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.

(f) The requirements for a guarantee for liability coverage are as follows:

(1) Subject to subdivision (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsection (e). The wording of the guarantee must be identical to the wording specified in 329 IAC 3.1-14-34. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subsection (e)(3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall satisfy the judgment or pay the amount agreed to in settlement of claims up to the limits of coverage.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. The guarantee may not be terminated unless and until the commissioner approves in writing alternate liability coverage complying with 329 IAC 3.1-14-24 or this section.

(2) In the case of the corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the guarantor is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a guarantee executed as described in this section and 329 IAC 3.1-14-34 is a legally valid and enforceable obligation in that state.

(3) In the case of the corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the non-U.S. corporation has identified a registered agent for service of process in Indiana and in the state in which it has its principal place of business; and

(B) the attorneys general or insurance commissioners of Indiana and the state in which the guarantor corporation has its principal place of business have submitted a written statement to the commissioner that a guarantee executed as described in this section and 329 IAC 3.1-14-34 is a legally valid and enforceable obligation in that state.

(g) The requirements for a letter-of-credit for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and by submitting a copy of the letter-of-credit to the commissioner.

(2) The financial institution issuing the letter-of-credit must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(3) The wording of the letter-of-credit must be identical to the wording specified in 329 IAC 3.1-14-37.

(4) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter-of-credit, all amounts paid pursuant to a draft by the trustee of the standby trust must be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated

and examined by a federal or state agency.

(5) The wording of the standby trust fund must be identical to the wording specified in 329 IAC 3.1-14-40.

(h) The requirements for a surety bond for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this section and by submitting a copy of the bond to the commissioner.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the current Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in 329 IAC 3.1-14-38.

(4) A surety bond may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the surety is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a surety bond executed as described in this subsection and 329 IAC 3.1-14-38 is a legally valid and enforceable obligation in that state.

(i) The requirements for trust fund for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the commissioner.

(2) The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund or within one hundred twenty (120) days of the reduction, whichever is sooner, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of the liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. As used in this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden, nonsudden, or sudden and nonsudden occurrences required to be provided by the owner or operator by this subsection, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in 329 IAC 3.1-14-39.

(Solid Waste Management Division; 329 IAC 3.1-15-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 998; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2034; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-9 Incapacity of owners or operators, guarantors, or financial institutions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.148

Sec. 9. (a) An owner or operator shall notify the commissioner by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a guarantee as specified in sections 4(g) and 6(g) of this rule shall make such a notification if the guarantor is named as debtor as required under the terms of the guarantee in section 10(h) of this rule.

(b) An owner or operator who fulfills the requirements of section 4, 6, or 8 of this rule by obtaining a trust fund, surety bond, letter-of-credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or the institution issuing the surety bond, letter-of-credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within sixty (60) days after such an event. *(Solid Waste Management Division; 329 IAC 3.1-15-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1001; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2039; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-15-10 Wording of instruments

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151

Sec. 10. (a) A trust agreement for a trust fund, as specified in section 4(b) or 6(b) of this rule, 329 IAC 3.1-14-5, or 329 IAC 3.1-14-15, must be worded identically as in 329 IAC 3.1-14-26 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 4(c) or 6(c) of this rule, 329 IAC 3.1-14-6, or 329 IAC 3.1-14-16, must be worded identically as in 329 IAC 3.1-14-27 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(c) A surety bond guaranteeing performance of closure, post-closure care, or closure and post-closure care, as specified in section 4(d) or 6(d) of this rule, must be worded identically to 329 IAC 3.1-14-28 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(d) A letter-of-credit, as specified in section 4(e) or 6(e) of this rule, 329 IAC 3.1-14-7, or 329 IAC 3.1-14-17, must be worded identically to 329 IAC 3.1-14-29 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(e) A certificate of insurance, as specified in section 4(f) or 6(f) of this rule, 329 IAC 3.1-14-8, or 329 IAC 3.1-14-18, must be worded identically to 329 IAC 3.1-14-30 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(f) A letter from the chief financial officer, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-31 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(g) A letter from the chief financial officer, as specified in section 8(e) of this rule or 329 IAC 3.1-14-24(f), must be worded identically to 329 IAC 3.1-14-32 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(h) A guarantee, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-33 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. A guarantee, as specified in section 8(f) of this rule or 329 IAC 3.1-14-24(g), must be worded identically to 329 IAC 3.1-14-34 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(i) A hazardous waste facility liability endorsement, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-35 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(j) A certificate of liability insurance, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-36 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(k) A letter-of-credit for liability coverage, as required in section 8(g) of this rule or 329 IAC 3.1-14-24(h), must be worded identically to 329 IAC 3.1-14-37 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(l) A surety bond for liability coverage, as required in section 8(h) of this rule or 329 IAC 3.1-14-24(i), must be worded identically to 329 IAC 3.1-14-38 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(m) A trust agreement for liability coverage, as required in section 8(i) of this rule or 329 IAC 3.1-14-24(j), must be worded identically to 329 IAC 3.1-14-39 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(n) A standby trust agreement for liability coverage, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-40 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. *(Solid Waste Management Division; 329 IAC 3.1-15-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1001; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2039; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 16. Universal Waste

329 IAC 3.1-16-1 Adoption of universal waste rule

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 273

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 273 is incorporated by reference. *(Solid Waste Management Division; 329 IAC 3.1-16-1; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-16-2 Exceptions and additions; petitions to add a universal waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-8-5; IC 13-22-2; 40 CFR 273

Sec. 2. (a) Exceptions and additions to 40 CFR 273 include the following:

(1) In addition to the waste management requirements in 40 CFR 273.13(d), add the following: A small quantity handler of universal waste shall not intentionally break or crush universal waste lamps.

(2) In addition to the labeling and marking requirements in 40 CFR 273.14(a), add the following: Other words that accurately identify the universal waste batteries may be used.

(3) In addition to the labeling and marking requirements in 40 CFR 273.14(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(4) In addition to the labeling and marking requirements in 40 CFR 273.14(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(5) In addition to the waste management requirements in 40 CFR 273.33(d), add the following: A large quantity handler of universal waste shall not intentionally break or crush universal waste lamps.

(6) In addition to the labeling and marking requirements in 40 CFR 273.34, *[sic.]* 40 CFR 273.34(a), add the following: Other words that accurately identify the universal waste batteries may be used.

(7) In addition to the labeling and marking requirements in 40 CFR 273.34(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(8) In addition to the labeling and marking requirements in 40 CFR 273.34(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(b) In addition to the petition procedures in 40 CFR 273, Subpart G, add the following: Any person seeking to add a hazardous waste or a category of hazardous waste to this article must do one (1) of the following:

(1) Petition for a regulatory amendment under IC 13-14-8-5. Citizen rulemaking petition procedures were published in the Indiana Register on June 1, 1995, at 18 IR 2355. Criteria for adding a hazardous waste or a category of hazardous waste to this rule are found at 40 CFR 273.80 and 40 CFR 273.81.

(2) Present evidence to the commissioner that demonstrates that the waste meets the criteria of 40 CFR 273.80 and 40 CFR 273.81 for inclusion under 40 CFR Part 273. If the evidence presented demonstrates to the satisfaction of the commissioner that regulation of the waste under the universal waste regulations of 40 CFR Part 273 and this section is appropriate for that waste or category of waste and meets the guidelines of 40 CFR 273.80(b), the commissioner will initiate a rulemaking action to amend this article appropriately.

(Solid Waste Management Division; 329 IAC 3.1-16-2; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3368; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

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