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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

#03-312(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING THE 2003 UPDATE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM AT 329 IAC 3.1

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 3.1 concerning:

- incorporating by reference the July 1, 2003, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273, including adopting three (3) recent federal changes to the hazardous waste management program, concerning:
 - zinc fertilizers made from recycled hazardous secondary materials,
 - the national treatment variance for radioactively contaminated batteries, and
 - corrections to the hazardous air pollutants standards for hazardous waste combusters,
- updating the incorporation by reference of 40 CFR 146 and the eight (8) appendices to 40 CFR 60 to the latest available editions,
- amending 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 to be consistent with federal changes to the recycled used oil management standards published by the U.S. Environmental Protection Agency (EPA) on July 30, 2003,
- amending 329 IAC 3.1-6-3 to clarify that chemical munitions listed in that section are acute hazardous wastes,
- substituting the Indiana statutory definition of PCB for the definition of PCB and PCBs, and
- correcting references to federal certification language and hazardous waste permits in the federal hazardous waste regulations.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-1-7; 329 IAC 3.1-6-2; 329 IAC 3.1-6-3; 329 IAC 3.1-12-2; 329 IAC 3.1-13-2; 329 IAC 13-3-1; 329 IAC 13-9-5.

AUTHORITY: IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2; P.L.231-2003, SECTION 6; 40 U.S.C. §6926; 40 U.S.C. §6929; 40 CFR 271.21.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking would incorporate by reference the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 273, revised as of July 1, 2003, including the following amendments published by the EPA in the Federal Register from July 24, 2002, through December 19, 2002:

| Federal Register | Publication Date | Subject |
|------------------|-------------------|---|
| 67 FR 48393 | July 24, 2002 | Zinc Fertilizers Made From Recycled Hazardous Secondary Materials |
| 67 FR 62617 | October 7, 2002 | Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries |
| 67 FR 77687 | December 19, 2002 | NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters - Corrections |

These federal rules are amendments to the federal hazardous waste regulations that are incorporated by reference in the Indiana hazardous waste management rules at 329 IAC 3.1.

Two of these amendments (the zinc fertilizer rule except for the removal of 40 CFR 268.40(i) and the national treatment variance rule for radioactively contaminated batteries) are optional but may be adopted to maintain consistency with the federal program as provided for in sections 3006 and 3009 of the Resource Conservation and Recovery Act, as amended (RCRA)(42 U.S.C. §6926

and 42 U.S.C. §6929 respectively), and by Indiana statutes.

The hazardous waste combustor NESHAP rule corrects the final standards for hazardous air pollutants for hazardous waste combusters, commonly known as the “MACT rule,” published on September 30, 1999 (64 FR 52827), November 19, 1999 (64 FR 63209), July 10, 2000 (65 FR 42292), May 14, 2001 (66 FR 24270), July 3, 2001 (66 FR 35087), and February 14, 2002 (67 FR 6968). The acronym MACT stands for “maximum available control technology.” The “MACT rule” is a mixture of required and optional rules and was incorporated by reference in 329 IAC 3.1 on May 4, 2001 at 24 IR 2431. Because this amendment corrects the current federal program and is not less stringent than the federal program, we must adopt it to keep Indiana’s hazardous waste program consistent with the federal hazardous waste program and to maintain our hazardous waste program authorization.

In addition to the federal changes included in the July 1, 2003, edition of 40 CFR 260 through 40 CFR 273, this rule would adopt changes to 40 CFR 261.5 incorporated by reference in 329 IAC 3.1-6, and the recycled used oil management standards in 329 IAC 13 that were published by the EPA on July 30, 2003 at 68 FR 44659 through 68 FR 44665. These changes correct and clarify the scope of certain regulatory requirements to eliminate confusion and are considered by the EPA to be no more stringent than the existing federal standards. (See Section III. State Authority at 68 FR 44663.) These changes are not required to be adopted by federal law.

States are not required to adopt federal amendments to the hazardous waste regulations that are not more stringent or broader in scope than the existing federal hazardous waste program. However, in many cases, federal amendments that are less stringent involve streamlining, cost reduction or implement other regulatory reduction initiatives.

In addition to the federal amendments, we are proposing the following changes:

- Update 329 IAC 3.1-1-7(a) that incorporates by reference 40 CFR 146, standards and criteria for underground injection wells, and 40 CFR 60, Appendices A-1 through A-8 that provide test methods for boilers and industrial furnaces, to include the latest version of these standards revised as of July 1, 2003.
- Amend 329 IAC 3.1-6-3 to clarify that the chemical munitions listed in that section are acute hazardous wastes.
- Amend 329 IAC 3.1-12-2 to substitute Indiana’s statutory definition of PCB and to correct a reference to current federal rule language for certifications.
- Amend 329 IAC 3.1-13-2 to correct a reference to RCRA hazardous waste permits in federal rule language.

Alternatives to be Considered Within the Rulemaking

We are considering nine (9) alternatives in this rulemaking.

Alternative 1. Adopt the zinc fertilizer rule (67 FR 48393) as promulgated in the Federal Register on July 24, 2002. This rule conditionally excludes from the definition of solid waste some zinc fertilizers made from recycled hazardous secondary materials. To exclude these secondary materials, generators, handlers, and manufacturers must make reports, keep records, and meet a number of regulatory requirements. This rule also eliminates the exclusion from land disposal restrictions treatment standards for K061 derived fertilizers in 40 CFR 268.40(i). Because this rule is adopted under RCRA authority that existed prior to the 1984 Hazardous and Solid Waste Amendments, this amendment will not be effective in Indiana until we adopt it in state rules.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because this rule is less stringent than the current federal hazardous waste regulations (except the elimination of the exclusion for K061 derived fertilizers in 40 CFR 268.40(i)), this rule is optional and is not required to be adopted under 42 U.S.C. §6926. However, the provision eliminating 40 CFR 268.40(i) is more stringent than the existing program and we are required to adopt it.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the July 24, 2002, federal rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 2. Adopt the national treatment variance rule for radioactively contaminated batteries (67 FR 62617) as promulgated in the Federal Register on October 7, 2002. This rule designates new treatment subcategories for radioactively contaminated batteries generated by the United States Department of Energy. While we are proposing to adopt this amendment to make Indiana’s rules consistent with the federal program, we do not expect any regulated entities in Indiana to be affected by this rule.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This rule is less stringent than the current federal hazardous waste regulations, therefore it is not required to be adopted under 42 U.S.C. §6926.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the October 7, 2002, federal rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 3. Adopt the hazardous waste combustor NESHAP correction rule (67 FR 77687) as promulgated in the Federal

Register on December 19, 2002. This rule corrects technical errors in the hazardous air pollution standards for hazardous waste combusters rule published on September 30, 1999. This rule must be adopted under 42 U.S.C. §6926 and 40 CFR §271.21 to maintain EPA authorization for this program, since failure to adopt it would result in a program that is inconsistent with the federal program.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This rule is required to be adopted under 42 U.S.C. §6926.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the December 19, 2002, federal rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 4. Amend 329 IAC 3.1-1-7(a) to incorporate by reference the versions of 40 CFR 146 and 40 CFR 60, Appendices A-1 through A-8 revised as of July 1, 2003. This amendment would require regulated entities to use the current versions of these rules. This amendment is imposed under federal law.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This amendment incorporates the latest editions of 40 CFR 146 and 40 CFR 60, Appendices A-1 through A-8, consistent with the current federal program.
- *If this alternative is a federal requirement, is it different from federal law?* No.
- *If it is different, describe the differences.* There are no differences.

Alternative 5. Adopt amendments to 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 to make the recycled used oil management standards consistent with changes published by the EPA on July 30, 2003. These changes clarify the applicability of the used oil standards to used oil containing PCBs and mixtures of used oil and conditionally exempt small quantity generator (CESQG) hazardous waste. The changes are intended to eliminate confusion experienced by regulated entities.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is a full text incorporation of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because these changes are not more stringent or broader in scope than the existing federal hazardous waste program, they are not required to be adopted under 42 U.S.C. §6926.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the July 30, 2003, federal rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 6. Amend 329 IAC 3.1-6-3 to clarify that the chemical munitions listed in that section are acute hazardous wastes. This would ensure the highest level of cleanup for these extremely hazardous wastes, consistent with Indiana law and the interests of the citizens of Indiana.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* No, this is a state-initiated change.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No.
- *If this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

Alternative 7. Adopt amendments to 329 IAC 3.1-12-2 that would correct references to PCBs. This amendment would substitute Indiana's statutory definition of PCB for the federal definition of "polychlorinated biphenyls and PCBs" in 40 CFR 268.2(e). It would also correct a reference to federal certification language in 40 CFR 268.7.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* No.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This is a state-initiated provision. Because these changes are not part of the federal program, they are not required to be adopted under 42 U.S.C. §6926 or other federal law.
- *If this alternative is a federal requirement, is it different from federal law?* This is a state-initiated provision that is different from the corresponding federal regulation.
- *If it is different, describe the differences.* IC 13-11-2-155 defines "PCB" differently from the federal definition of "PCB or PCBs" in 40 CFR 761.3.

Alternative 8. Amend 329 IAC 3.1-13-2 to correct a reference to hazardous waste permits. This amendment would correct a confusing reference to RCRA hazardous waste permits in 40 CFR 270.32(b)(2).

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* Yes
- *Is this alternative imposed by federal law or is there a comparable federal law?* This amendment corrects erroneous language in 40 CFR 270.32(b)(2). It is not red to be adopted under 42 U.S.C. §6926 or other federal law.

- *If this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

Alternative 9. Do not adopt one (1) or more of the amendments described above.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* No.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No.
- *If this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

Additional Alternatives

This notice specifically solicits comment on the alternatives listed above and any other alternatives that would accomplish the purpose of this rule. Based on the comments received on this notice, additional alternatives may be considered.

Applicable Federal Law

Sections 3006 and 3009 of RCRA (42 U.S.C. §6926 and 42 U.S.C. §6929) and 40 CFR 271 require states that choose to operate a hazardous waste management program in lieu of the federal program to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA Administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn.

40 CFR 260 through 40 CFR 273 contain the federal hazardous waste program. These regulations have been incorporated by reference in 329 IAC 3.1. The amendments proposed in this rule would make 329 IAC 3.1 as consistent as possible with the federal hazardous waste program.

Potential Fiscal Impact

As required by IC 13-14-9-3(2)(B) (added by P.L. 240-2003, SECTION 4), alternatives 1, 2, 5, 6, 7, 8, and 9 are not imposed under federal law and may potentially have the following fiscal impact:

Potential Fiscal Impact of Alternative 1. The fiscal impact of this alternative is estimated to be an annual cost savings of approximately forty-two thousand eight hundred dollars (\$42,800), based on two percent (2%) of the total annual cost savings nationwide of two million one hundred forty thousand dollars (\$2,140,000) estimated by the EPA. (See 67 FR 48409, Section VII.A. Executive Order 12866, Table 1. - Estimated Incremental Costs and Cost Savings by Facility Category.)

Potential Fiscal Impact of Alternative 2. EPA did not provide an economic impact analysis for this rule. Because we do not expect any regulated entities in Indiana to be affected by this provision, we estimate that this alternative will have no economic impact to regulated entities in Indiana.

Potential Fiscal Impact of Alternative 5. These amendments would eliminate confusion experienced by regulated entities. The EPA did not provide an economic analysis of this rule, and we do not have enough information to quantify the rule's potential costs or benefits. We specifically request any available information on the specific costs or benefits of these changes. We expect this provision to make the recycled used oil standards easier to understand and comply with.

Potential Fiscal Impact of Alternative 6. This amendment would have minimal economic impact because most contractors currently treat these chemical munitions as acute hazardous waste. The actual impact is not quantifiable at this time.

Potential Fiscal Impact of Alternative 7. This amendment does not establish any new regulatory requirements. We anticipate that this rule will not result in any new costs or savings to regulated entities in Indiana. This amendment will make terminology in the hazardous waste rules consistent with Indiana law.

Potential Fiscal Impact of Alternative 8. This amendment does not establish any new requirements. It corrects a confusing reference to RCRA hazardous waste permits in the federal rule language. This alternative will have no economic impact on regulated entities in Indiana.

Potential Fiscal Impact of Alternative 9. Regulated entities would not realize the potential cost savings of alternative 1. Failure to adopt alternative 3 could result in withdrawal of federal authorization for Indiana's hazardous waste program. The immediate cost of such a withdrawal could be as much as two million eight hundred thousand dollars (\$2,800,000) to Indiana taxpayers if federal grants supporting the hazardous waste management program are withdrawn. Other costs of such a withdrawal cannot be quantified at this time. In addition, regulated entities would not benefit from the clarifications in alternatives 5, 7, and 8. The economic impact of those clarifications is not quantifiable at this time. Failure to adopt alternative 6 could result in exposure of Indiana citizens to small amounts of chemical munitions. The economic impact of such exposure cannot be quantified at this time.

Public Participation and Work Group Information

We may establish an external work group to discuss issues involved in this rulemaking. The work group, if established, would be made up of department staff and a cross-section of stakeholders. If you believe a work group would further the purposes of this rule and result in better rulemaking, and you wish to participate in the work group, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

#03-312(SWMB) [2003 Hazardous Waste Annual Update Work Group]

Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

If too many applications are received to form a functional work group, the department will select a representative group from the applications on file.

The formation of a work group, if it occurs, will be announced on IDEM's rulemaking website: <http://www.in.gov/idem/rules/>.

If a work group is formed and you wish to provide comments to the work group on the rulemaking, attend meetings, or submit suggestions related to the work group process, please contact Steve Mojonner, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

The public is also encouraged to submit comments and questions directly to members of the work group who represent their particular interests in the rulemaking. If a work group is established, a list of work group members and the interests they represent will be provided on request.

Effect on Industries Listed in Public Law 231-2003, SECTION 6

In accordance with P.L.231-2003, SECTION 6, this rule cannot require a person who engages in an industry listed in that section to comply with a standard of conduct that exceeds the standard of conduct established in the related federal regulation or regulatory policy until July 1, 2005. Therefore, because some requirements proposed to be adopted in this rule are not imposed under federal law and exceed the standard of care established in the related federal regulation, they will not apply to persons who engage in any of the following industries until July 1, 2005:

3312: Steel works, blast furnaces (including coke ovens), and rolling.

3321: Gray and ductile iron foundries.

3322: Malleable iron foundries.

3324: Steel investment foundries.

3325: Steel foundries, not elsewhere classified.

3365: Aluminum foundries.

3366: Copper foundries.

3369: Nonferrous foundries, except aluminum and copper.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of information on the fiscal impact of each alternative identified in this notice.

Mailed comments should be addressed to:

#03-312(SWMB) [2003 Hazardous Waste Annual Update]

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

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

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

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by **January 31, 2004.**

Additional information regarding this action may be obtained from Steve Mojonner of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking web site at <http://www.in.gov/idem/rules/>.

Bruce H. Palin

Deputy Assistant Commissioner

Office of Land Quality