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## TITLE 329 SOLID WASTE MANAGEMENT BOARD

### CONTINUATION OF 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

On January 1, 2004, the Indiana Department of Environmental Management (IDEM) solicited 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.

Since publishing that notice, we have identified two new issues that must be addressed in a timely manner:

- 329 IAC 3.1-12-2(4) contains a provision that is no longer consistent with 40 CFR 268, Subpart C. We are proposing to amend that provision as described in this notice to make Indiana's hazardous waste program consistent with the federal hazardous waste land disposal restrictions in 40 CFR 268. IDEM seeks comment on this proposed amendment to 329 IAC 3.1-12-2 and any other provisions of Title 329 that may be affected by this rulemaking.
- IC 13-22-5-12 requires us to have in place, by July 1, 2005, rules to manage loads of hazardous waste that are rejected by a treatment, storage, or disposal facility. On May 22, 2001 (66 FR 28240), the U.S. Environmental Protection Agency (EPA) proposed a hazardous waste manifest modification rule that contained provisions for rejected loads of hazardous waste. At this time it does not appear that EPA will finalize that rule before July 1, 2005. As a result, we are proposing to add requirements for rejected loads of hazardous waste to this rule, as required by IC 13-22-5-12.

IDEM seeks comment on the issues described above, 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 3.1-7.5; 329 IAC 3.1-12-2; 329 IAC 3.1-13-2; 329 IAC 13-3-1; 329 IAC 13-3-4; 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; IC 13-22-5-12; 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

In this notice we are proposing to add two (2) additional changes to the original First Notice of Comment period published on January 1, 2004, at 27 IR 1387 which would:

- (1) amend 329 IAC 3.1-12-2(4) to apply to hazardous wastes identified or listed in both Subpart C and Subpart D; and
- (2) add management requirements for loads of hazardous waste that are rejected by a treatment, storage or disposal facility, as

required by IC 13-22-5.

We are proposing to amend 329 IAC 3.1-12-2(4) to correct an inaccuracy. This provision was originally adopted to eliminate a date that conflicted with Indiana statutes that prohibit retroactive rulemaking. However, after numerous changes, 40 CFR 268, Subpart C no longer contains a complete list of wastes that are subject to the land disposal restrictions. 40 CFR Subpart D, which contains treatment standards for specific hazardous wastes and universal treatment standards for hazardous waste constituents, was added after 329 IAC 3.1-12-2(4) was adopted. Subpart D applies to more wastes than are identified or listed in Subpart C. As a result, the statement in 329 IAC 3.1-12-2(4) is inaccurate and makes the Indiana land disposal restrictions less stringent than the federal land disposal restrictions.

In addition, we are proposing to add a new 329 IAC 3.1-7.5 to establish rules to manage loads of hazardous waste that are rejected by a hazardous waste treatment, storage or disposal facility, as required by IC 13-22-5-12. The new rules must be in place by July 1, 2005, when the current statute regulating rejected loads expires.

All other information about this rulemaking that was published on January 1, 2004, at 27 IR 1387 remains as noticed.

#### **Alternatives to be Considered Within the Rulemaking**

We are considering two (2) additional alternatives in this rulemaking, in addition to the nine (9) alternatives proposed on January 1, 2004.

Alternative 10. Amend 329 IAC 3.1-12-2(4) to apply to wastes identified or listed in both 40 CFR 268, Subpart C and Subpart D. This provision was adopted when 40 CFR 268, Subpart C contained a complete list of wastes subject to land disposal restrictions. After 329 IAC 3.1-12-2(4) was adopted, 40 CFR 268, Subpart D was added. Subpart D applies to more wastes that are subject to the land disposal restrictions than are identified or listed in 40 CFR 268, Subpart C. As a result, the statement in 329 IAC 3.1-12-2(4) makes the Indiana hazardous waste program less stringent than the federal program and must be amended as required by 42 U.S.C. §6929.

- *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?* The current language makes the Indiana hazardous waste program less stringent than the current federal hazardous waste regulations. Federal law requires our rules to be at least as stringent as the federal hazardous waste program (42 U.S.C. §6929).
- *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 11. Add a new 329 IAC 3.1-7.5 (or place the requirements at a more appropriate location) to establish management requirements for rejected hazardous waste loads. IC 13-22-5-12 requires us to have in place, by July 1, 2005, rules to manage loads of hazardous waste that are rejected by a hazardous waste treatment, storage or disposal facility. On May 22, 2001, the EPA proposed a hazardous waste manifest modification rule that contained provisions for rejected loads of hazardous waste. At this time it does not appear that EPA will finalize that rule before July 1, 2005. As a result, we are proposing to add requirements for rejected loads of hazardous waste to this rule. These would be based on the requirements in IC 13-22-5 and EPA's May 22, 2001, proposal. We anticipate adding a new 329 IAC 3.1-7.5 for these requirements, but they could be placed at some other more appropriate location in Article 3.1.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This would be a full text rule based on IC 13-22-5 and currently proposed EPA standards. However, if EPA finalizes a federal rejected load rule before the July 1, 2005 deadline, we could incorporate that rule by reference.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No. There is currently no corresponding federal requirement. However, since federal law requires our rules to be at least as stringent as the federal hazardous waste program (42 U.S.C. §6929), when EPA finalizes a rejected load rule, we may have to update our requirements to ensure that they are as stringent as the new federal rule.
- *If this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

#### **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.

## 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 **March 31, 2003**.

Additional information regarding this action may be obtained from Steve Mojonier 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 February 17, 2004 on IDEM's rulemaking website at <http://www.in.gov/idem/rules/>.

Bruce H. Palin  
Deputy Assistant Commissioner  
Office of Land Quality