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TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND 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 AND 329 IAC 13

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM, the department, or we) has developed draft rule language for new rules and amendments to rules in 329 IAC 3.1 and 329 IAC 13 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,
- amending 329 IAC 3.1-1-7 to update the incorporation by reference of 40 CFR 146 and the eight (8) appendices to 40 CFR 60 to the most recent editions,
- amending 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 and adding a new 329 IAC 13-3-4 to adopt federal changes to the recycled used oil management standards in 40 CFR 279 published by the U.S. Environmental Protection Agency (EPA) on July 30, 2003 (68 FR 44659),
- amending 329 IAC 3.1-6-3 to clarify that chemical munitions listed as Indiana hazardous wastes are acute hazardous wastes,
- adding a new 329 IAC 3.1-7.5 (or placing the provisions at another appropriate location) to retain procedures for managing hazardous waste loads rejected by a treatment, storage, or disposal facility that are currently found in IC 13-22-5-12, which is due to expire on July 1, 2005,
- substituting the Indiana statutory definition of PCB and correcting a reference to federal certification language in 329 IAC 13-12-2,
- changing 329 IAC 3.1.12-2(4) to correctly refer to hazardous wastes that are subject to the land disposal restrictions, and
- amending 329 IAC 3.1-13-2 to clarify a reference to hazardous waste permits in federal rule language.

By this notice, we are soliciting public comment on the draft rule language. We are requesting comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: January 1, 2004, Indiana Register (27 IR 1387).

Continuation of First Notice of Comment Period: March 1, 2004, Indiana Register (27 IR 2104).

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

This rule would adopt a number of changes to Indiana's hazardous waste program. Some of these changes adopt federal amendments to the hazardous waste program that occurred between July 24, 2002, through July 30, 2003. Other changes adopt Indiana revisions or additions to the federal program or correct problems in the rules that we have identified since the 2002 annual update (LSA Document #02-235).

FEDERAL REVISIONS INCLUDED IN THE JULY 1, 2003 EDITION: 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. The federal rules listed below 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. Incorporating the new edition of these regulations adopts all changes that have occurred since the last update. These changes include the following amendments published by the EPA in the Federal Register from July 24, 2002, through December 19, 2002:

- Zinc Fertilizers Made from Recycled Hazardous Secondary Materials: Final Rule, published July 24, 2002, at 67 FR 48393.
- Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries; Direct Final Rule, published October 7, 2002, at 67 FR 62617.
- NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters - Corrections, published December 19, 2002, at 67 FR 77687.

Two (2) 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 and may be adopted 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 combuster 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 more stringent than the current federal hazardous waste program, we must adopt it to keep Indiana’s hazardous waste program consistent with the federal program and to maintain our hazardous waste program authorization.

ADDITIONAL FEDERAL REVISIONS: 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 and changes to the federal recycled used oil management standards that were published by the EPA on July 30, 2003, at 68 FR 44659 through 68 FR 44665. Because the federal recycled used oil standards (40 CFR 279) are incorporated in full text in 329 IAC 13, these changes would appear in 329 IAC 13-3-1, 329 IAC 13-9-5, and in a new 329 IAC 13-3-4 that adds the language from 40 CFR 761.20(e), making it consistent with Indiana’s used oil rules. 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 in the preamble to the federal rule at 68 FR 44663). Because states are only required to adopt federal amendments to the hazardous waste regulations that are more stringent or broader in scope than the existing federal hazardous waste program, these changes are not imposed under federal law. However, in many cases, federal amendments that are less stringent involve streamlining, clarification, or cost reduction or implement other regulatory reduction initiatives. Because this rule would clarify the standards for used oil containing PCB and may result in cost savings, we decided to make it effective as soon as possible.

INDIANA ADDITIONS AND REVISIONS: This rule would adopt the following Indiana initiated additions or revisions to the federal hazardous waste program:

- This rule would amend 329 IAC 3.1-6-3 to clarify that the chemical munitions listed in that section are acute hazardous wastes. P.L.85-1992, SECTION 5, required the Solid Waste Management Board (board) to adopt rules to add six (6) chemical munitions to the lists of hazardous wastes. That rule was adopted by the board effective on June 5, 1994. That rule did not specifically identify these chemical munitions as acute hazardous waste because it was assumed that the United States Government and its contractors would manage these extremely hazardous substances and their byproducts as acute hazardous wastes during their destruction. Recently, the acute status of chemical munitions has been questioned. In some cases, management standards for acute waste differ from those of nonacute waste. Chemical munitions meet all of the criteria specified in the hazardous waste rules for listing as an acute hazardous waste. This rule would make it clear that the six (6) chemical munitions listed in 329 IAC 3.1-6-3 are acute hazardous wastes and must be managed under the more restrictive requirements for acute hazardous wastes.
- This rule would add a new 329 IAC 3.1-7.5 to retain rules for managing loads of hazardous waste that are

rejected by a treatment, storage, or disposal facility that are currently found in IC 13-22-5. These requirements prevent confusion over who is responsible for a rejected load and keep rejected loads from being abandoned. These rules would maintain the “cradle-to-grave” audit trail for a hazardous waste that is the foundation of the hazardous waste program. IC 13-22-5 will expire on July 1, 2005, or on the effective date of EPA regulations for rejected loads of hazardous waste, whichever occurs first. On May 22, 2001 (66 FR 28240), EPA published a proposed rule to modify the uniform hazardous waste manifest that included provisions for rejected loads. That proposed rule was subject to extended notice and comment. EPA intends to publish a final manifest rule in June 2004. That final rule will be effective in December 2005, after the expiration date of IC 13-22-5. Because the EPA rule is being adopted under authority that existed prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA rule will not become effective in Indiana until the board adopts the federal provisions and we receive authorization from EPA under 40 CFR 271 (see Section IX. “How Would Today’s Proposed Regulatory Changes Be Administered and Enforced in the States?” in the preamble to the proposed rule at 66 FR 28298-28299). In this notice, we are providing draft rule language based on the current statutory language. When EPA publishes a final manifest modification rule, we will propose adoption of those changes in a separate rulemaking.

CORRECTIONS AND CLARIFICATIONS: In addition to the federal and state amendments described above, we are proposing the following corrections and clarifications:

- 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. This change would adopt the latest version of these standards revised as of July 1, 2003.
- Correct 329 IAC 3.1-12-2 by substituting Indiana’s statutory definition of PCB, correct a reference to federal rule language for certifications in 40 CFR 268.7, and remove an outdated reference to 40 CFR 268, Subpart C.
- Amend 329 IAC 3.1-12-2(4) to correctly identify hazardous wastes that are subject to the land disposal restrictions.
- Amend 329 IAC 3.1-13-2 to correct a reference to RCRA hazardous waste permits in 40 CFR 270.32(b)(2).

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

As required by IC 13-14-9-4, the following elements of the draft rule impose either a restriction or a requirement that is “not imposed under federal law” (NIFL elements).

NIFL ELEMENT 1. Zinc fertilizers made from recycled hazardous secondary materials (67 FR 48393; July 24, 2002). This rule conditionally excludes from the definition of solid waste some zinc fertilizers made from recycled hazardous secondary materials. To have these secondary materials excluded, generators, handlers, and manufacturers must make reports, keep records, and meet a number of regulatory requirements. Because this rule is less stringent than the current federal hazardous waste regulations, this rule is optional and is not required to be adopted under 42 U.S.C. §6926. Because this rule is adopted under RCRA authority that existed prior to HSWA, this amendment will not be effective in Indiana until the board adopts it in state rules. However, the removal of the exclusion from land disposal restriction treatment standards for K061 derived fertilizers in 40 CFR 268.40(i) is imposed under federal law (HSWA) and was effective on July 24, 2002.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Failure to adopt these requirements would prevent persons from obtaining the exclusion, since the exclusion is unavailable for materials that do not meet the conditions of the exclusion.

Examples in which federal law is inadequate: This exclusion does not become effective in Indiana (an authorized state) until it is adopted in Indiana rules.

Estimated fiscal impact and expected benefits: The fiscal impact of this rule is expected 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.)

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 2. Amendments to 329 IAC 3.1-12-2 correcting references to PCBs in 40 CFR 268 and removing an outdated reference to 40 CFR 268, Subpart C. This amendment would substitute Indiana’s statutory definition of PCB for the federal definition in 40 CFR 268.2(e), correct a reference in the current federal rule

language, and remove an outdated reference to 40 CFR 268, Subpart C. These amendments are not imposed under federal law (42 U.S.C. §6926).

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: The federal definition of “polychlorinated biphenyls or PCBs” in 40 CFR 268.2(e) differs from the Indiana statutory definition in IC 13-11-2-155, creating confusion over which definition to use. The incorrect reference to certification language can cause problems for persons attempting to comply with the rule. The outdated reference to 40 CFR 268, Subpart C, makes the rule inconsistent with and less stringent than the federal hazardous waste program and could result in loss of federal authorization for Indiana’s hazardous waste program.

Examples in which federal law is inadequate: See above.

Estimated fiscal impact and expected benefits: Because this provision clarifies existing requirements, we do not anticipate that this provision will result in any fiscal impact.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 3. Amendments to 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 and new 329 IAC 13-3-4 adopting federal changes to the recycled used oil management standards published by the EPA on July 30, 2003 at 68 FR 44659 through 68 FR 44665.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: The federal changes are intended to reduce confusion in the regulated community about how used oil containing PCBs or mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil must be managed. Because this rule potentially benefits regulated entities by making the used oil rules easier to follow, we feel these changes should be adopted with minimal delay. This rule is no more stringent than the existing federal hazardous waste program and is not required to be adopted under 42 U.S.C. §6926.

Examples in which federal law is inadequate: The existing federal hazardous waste program, upon which our current rules at 329 IAC 13 are modeled, does not provide the clarification these changes are intended to provide.

Estimated fiscal impact and expected benefits: 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. Because this rule merely clarifies how specific mixtures of used oil must be managed, we do not expect it to result in significant costs or savings. We specifically request any available information on the specific costs or benefits of these changes.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 4. Amendments to 329 IAC 3.1-6-3 clarifying that the chemical munitions listed in that section are acute hazardous wastes. This would ensure the highest level of care for management of these extremely hazardous wastes, consistent with Indiana law and the interests of the citizens of Indiana.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Federal regulations do not list these highly toxic chemical munitions as hazardous wastes. As a result, this provision is broader in scope than the federal hazardous waste regulations. They were listed as hazardous wastes in Indiana in 1994, as required by P.L.85-2001. That listing did not specifically identify these chemical munitions as “acute hazardous wastes.” This listing is applicable only to U.S. Army Newport Chemical Depot, in conjunction with the destruction of chemical munitions. Recently, the department’s application of management standards for acute waste to some activities involved in the destruction and management of the chemical munitions at Newport have been questioned. We believe that the status of chemical munitions as acute hazardous waste is clear. We also recognize that, due to the unique nature of these munitions, some flexibility in applying the acute management standards is reasonable, yet still protective. Since these munitions are not federal hazardous waste, we can modify requirements as appropriate to ensure that Indiana’s requirements do not unnecessarily interfere with prompt, effective destruction of these munitions. The rule language proposed today clarifies the “acute hazardous waste” status of these chemical munitions while at the same time providing us the flexibility to modify regulatory requirements as necessary.

Examples in which federal law is inadequate: Federal law does not list chemical munitions as hazardous waste.

Estimated fiscal impact and expected benefits: The economic impact is not quantifiable at this time. The entity affected by this clarification raised objections to this provision due to anticipated increased costs of compliance but

did not provide specific cost information. Because the listing of chemical munitions as acute hazardous waste is broader in scope than the relevant federal regulation, we are not required to follow the corresponding federal requirements to the letter. We are proposing to make alternative requirements where necessary to protect human health and the environment, placing these requirements in permits, orders, or other appropriate vehicles. These requirements would allow us to maintain the necessary level of protection for these operations while minimizing costs and risks resulting from unnecessary handling. We feel that placing such alternative requirements in a rule would make them so broad and inflexible that they could not provide the specific relief requested while maintaining adequate protections.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 5. Add a new 329 IAC 3.1-7.5 to establish management requirements for hazardous waste rejected loads. These requirements are currently found in IC 13-22-5. That chapter expires on July 1, 2005, at which time we are required to have rules in place for rejected loads.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Hazardous waste treatment, storage, or disposal facilities may reject loads of hazardous waste for a variety of reasons. Such a rejection results in confusion for the generator and transporter and can result in mishandling or loss of control over the load.

Examples in which federal law is inadequate: The EPA proposed rule on rejected loads (May 22, 2001, 66 FR 28240) may not be finalized before IC 13-22-5 expires, leaving resolution of this problem to the department. If it is finalized, we will consider substituting the federal provisions for the language on rejected loads published today.

Estimated fiscal impact and expected benefits: Because this rule replaces the statutory requirements for rejected loads in IC 13-22-5, we do not anticipate that it will result in either significant new costs or savings for hazardous waste generators and transporters. We will continue to study this rule to ensure the economic impact is minimized.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

Potential Fiscal Impact

We have estimated the fiscal impact of this rule as follows:

Alternative Identified in First Notice and Continuation of First Notice	Estimated Economic Impact
1. Excludes from the definition of solid waste some zinc EPA estimates this alternative will result in a total annual fertilizers made from recycled hazardous secondary cost savings for all facilities nationwide of \$2.14 million materials. (Adds 40 CFR 261.4(a)(20) and (a)(21); amends (in 1999 dollars). Because we do not have information on 40 CFR 266.20(b); adds 40 CFR 266.20(d); removes 40 which facilities would use this exclusion, we have CFR 268.40(i).) estimated the annual saving to Indiana entities to be approximately \$42,800, or 2% of the national annual savings.	
2. Adopts the national treatment variance rule for We do not expect any regulated entities in Indiana to be radioactively contaminated batteries and designates new affected by this alternative. We estimate this alternative treatment subcategories for these batteries generated by the will result in no new costs or savings to regulated entities United States Department of Energy. (Amends entries in Indiana. D006, D009 and D011 in the 40 CFR 268.40 Table.)	
3. Corrects technical errors in the hazardous air pollution This alternative only corrects errors. It does not establish standards (NESHAP) for hazardous waste combusters any new regulatory requirements. We estimate this published on September 30, 1999. (Amends permit alternative will not result in any new costs or savings to requirements in 40 CFR 270.19(e), 40 CFR 270.22, 40 regulated entities in Indiana. CFR 270.62, and 40 CFR 270.66.)	

4. Amends 329 IAC 3.1-1-7(a) to incorporate by reference the current versions of 40 CFR 146 and 40 CFR 60, Appendices A-1 through A-8 revised as of July 1, 2003, allowing regulated entities to use the current versions of these rules.	No information is currently available on whether use of the more recent standards would result in new costs or savings to regulated entities.
5. Adds 329 IAC 3.1-6-2(16), 329 IAC 13-3-1(i) through (l), and 329 IAC 13-3-4, and amends 329 IAC 13-9-5(b) to adopt changes to the recycled used oil management standards published by the EPA on July 30, 2003.	This rule clarifies when used oil containing PCB is regulated under 329 IAC 13. It does not impose any new requirements but it may affect actions taken by regulated entities under that article. No information is currently available on whether these clarifications would result in new costs or savings to regulated entities.
6. Amends 329 IAC 3.1-6-3 to clarify that chemical munitions listed in that section are acute hazardous waste.	This alternative codifies existing policies and management practices. While a commentor has asserted that this change will result in increased costs, no specific information has been provided to allow us to estimate the potential costs of this change. We believe that, with appropriate modifications to requirements, this change will not result in increased costs to the regulated entities.
7. Amends 329 IAC 3.1-12-2(5) and (7)(D) to correct references to PCBs in 40 CFR 268. This amendment would substitute the statutory definition of PCB and correct a reference in the current federal rule language.	This alternative reflects current practice and does not establish any new regulatory requirements. We estimate this alternative will not result in any new costs or savings to regulated entities in Indiana.
8. Adds 329 IAC 3.1-13-2(10) to clarify a confusing reference to RCRA hazardous waste permits.	This alternative does not impose a new requirement. It will not result in any new costs or savings.
9. Do not adopt one or more of the above alternatives.	Potential costs or savings from this alternative cannot be estimated until it is clear which alternatives will be adopted. Because the potential costs or savings from any of these alternatives are limited, the potential costs or savings from this alternative is similarly limited.
10. Amends 329 IAC 3.1-12-2(4) to correctly refer to wastes that are subject to the land disposal restrictions.	This alternative would make Indiana's hazardous waste program consistent with and as stringent as the federal hazardous waste program. Because it reflects current practice, it will not result in increased costs or savings to regulated entities in Indiana.
11. Adds a new 329 IAC 3.1-7.5 to establish management standards for rejected loads of hazardous wastes.	This alternative replaces the statutory rejected load requirements in IC 13-22-5 with similar provisions. It is not expected to result in any new costs or savings to regulated entities in Indiana.

We estimate that this rulemaking will not result in an economic impact greater than five hundred thousand dollars (\$500,000) to regulated entities in Indiana. This rule will not be submitted to the Legislative Services Agency for analysis under IC 4-22-2-28 at this time. However, if additional information is received that indicates this rule is subject to IC 4-22-2-28, we will submit this rule to the Legislative Services Agency in accordance with IC 4-22-2-28. IDEM is specifically requesting information and comment on the potential economic impact of this rule.

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 any of the following industries (identified by Standard Industry Classification Code (SIC Code) 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:

- Blast furnaces and steel mills (SIC 3312);
- Gray and ductile iron foundries (SIC 3321);
- Malleable iron foundries (SIC 3322);
- Steel investment foundries (SIC 3324);
- Steel foundries (SIC 3325);

Aluminum foundries (SIC 3365);
Copper foundries (SIC 3366); and
Nonferrous foundries (SIC 3369).

Therefore, because some provisions proposed to be adopted in this rule impose requirements that are not imposed under federal law and that exceed the standard of care established in the related federal regulation, they will not apply to persons who engage in any of the industries listed above until July 1, 2005. The conditional exclusions in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials will not apply to those industries until July 1, 2005 because those exclusions contain additional requirements that are not imposed under 42 U.S.C. §6926.

Public Participation and Workgroup Information

We requested comment on the need for a workgroup to facilitate public and industry participation in this rulemaking. We received one (1) request for a workgroup in response to this request. On January 30, 2004, the U.S. Army, Newport Chemical Depot, requested formation of a workgroup to assist with development of rule language to clarify that the chemical munitions listed in 329 IAC 3.1-6-3 are acute hazardous wastes. This request raised two (2) issues related to the application of the hazardous waste program to these wastes.

As we developed the draft rule language, we found that we could designate these wastes as acute hazardous wastes and make provisions for the commissioner to set alternative requirements for these wastes to accommodate the unique circumstances of chemical munitions destruction and disposal. This approach would allow us to set specific, flexible standards for those parts of the operation that require them, when necessary to protect human health and the environment. These standards could be modified or withdrawn as needed without a lengthy administrative process. We feel this approach is preferable to writing specific rule requirements for the Newport Chemical Depot that can only be modified through additional rulemaking. As a result, we do not intend to form a workgroup for this rule at this time. If the need for a workgroup to do additional work on this issue or other specific issues becomes apparent, we will revisit this decision.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from January 1, 2004, through January 31, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. We received comments from the following party by the comment period deadline:

Jeffrey L. Brubaker, Site Project Manager, U.S. Army Newport Chemical Depot (NECD)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: If IDEM considers material generated during the decontamination or treatment of chemical munitions related material to be I001 "derived-from" wastes in accordance with 40 CFR 261.3(c)(2)(i), then we would recommend that the proposal be revised to exclude derived-from wastes from the acute hazardous waste listing. Without such an exclusion, the proposed amendment will effectively eliminate the ability of the Army's contractors to utilize satellite accumulation (as allowed by 40 CFR 262.34(c) and incorporated by 329 IAC 3.1-7-1) for derived-from waste from the destruction of chemical agents and the decommissioning of agent production/destruction facilities without any apparent benefit to human health or the environment. The elimination of satellite accumulation would place unnecessary logistical restrictions on the time allotted to accumulate waste at the point of generation and would increase the number of waste transfer operations leading to:

- increased costs for waste management,
- increased air monitoring and sampling requirements to meet Army decontamination requirements,
- increased risks to waste handlers performing additional entries into chemical agent exclusion or limited areas, and
- increased risks of spills with additional waste handling.

In addition, we recommend that the proposal be revised to limit the applicability of the proposed acute waste listing to the handling of containers with the actual chemical agents in accordance with the requirements of 40 CFR 261.7 (Residues of hazardous waste in empty containers) and incorporated by 329 IAC 3.1-6-1. (NECD)

Response: It would be extremely difficult to separate the "acutely hazardous" derived-from waste from the derived-from wastes that are potentially not acutely hazardous, without comprehensive testing of each waste. Such testing increases risks and expenses. Some of these derived-from wastes continue to cause public health concerns, while others can be handled as nonacute hazardous waste. The real issue in this comment is the prohibition on satellite accumulation by a generator of more than one (1) quart of acute hazardous waste. The commentor asserts that this prohibition is triggered by designating these chemical munitions as acute hazardous waste, and that this

prohibition will result in unnecessary handling of the waste, increased costs, and increased risk to personnel.

These chemical munitions are not listed as hazardous wastes in the federal hazardous waste program. As a result, the requirement to regulate them in strict consistency with the federal program does not apply. These munitions are highly protected and constantly monitored, and they are being destroyed by highly skilled professionals in a tightly controlled process with extraordinary public oversight. In this context, we agree that there are circumstances where the strict requirements of the RCRA program are counterproductive to the process of destroying these munitions and could be modified. While we are still proposing to designate these chemical munitions as acute hazardous wastes to ensure that all wastes derived from the process receive appropriate scrutiny, we are recognizing the flexibility to modify certain provisions of the state program as needed to help achieve the overall public policy goal of expeditiously destroying these substances, while maintaining an appropriate level of protection. Under this proposal, we would have the flexibility to modify or waive the satellite accumulation restriction as long as the generator can provide assurances that the waiver is appropriate and that adequate protective measures will be maintained.

Comment: Recommend IDEM consider separate listings for unused/unaltered chemical munitions/agents and derived-from wastes generated during the destruction of chemical agents. Recommend IDEM list unused chemical munitions as acute hazardous waste and recommend that IDEM not apply the acute classification to derived-from wastes. A separate listing could allow IDEM to list chemical munitions as acute waste but not eliminate the ability to satellite accumulate wastes that are decontaminated derived-from wastes (e.g., personal protective equipment, ton container valves, broken tools and equipment, etc.) generated during the destruction of the chemical agents. (NECD)

Response: The previous response applies to this comment.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2004, through March 31, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. We received no comments in response to the continuation of the first notice of comment period.

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 specific information on the fiscal impact of the draft rule published 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 **May 31, 2004**.

CONTACT FOR ADDITIONAL INFORMATION ABOUT THIS RULE

Additional information regarding this rulemaking may be obtained from Steve Mojonniier 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.

DRAFT RULE

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 27 IR 1874, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4

Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of ~~July 1, 2002~~: **July 1, 2003**.

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

(1) 40 CFR 146, ~~(1995)~~: **revised as of July 1, 2003**.

(2) 40 CFR 60, ~~Appendix A (1995)~~: **Appendix A-1, revised as of July 1, 2003**.

(3) **40 CFR 60, Appendix A-2, revised as of July 1, 2003**.

(4) **40 CFR 60, Appendix A-3, revised as of July 1, 2003**.

(5) **40 CFR 60, Appendix A-4, revised as of July 1, 2003**.

(6) **40 CFR 60, Appendix A-5, revised as of July 1, 2003**.

(7) **40 CFR 60, Appendix A-6, revised as of July 1, 2003**.

(8) **40 CFR 60, Appendix A-7, revised as of July 1, 2003**.

(9) **40 CFR 60, Appendix A-8, revised as of July 1, 2003**.

~~(b)~~ (d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in ~~subsection~~ **subsections (a) through (c)**. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

~~(c)~~ (e) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

~~(d)~~ (f) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

~~(e)~~ (g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions ~~which that~~ may be effective in Indiana ~~which that~~ are not incorporated in this article or are retained as federal authority. (*Solid Waste Management Board*; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)

SECTION 2. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

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 13-11-2-99; 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. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as

follows:

(1) This rule identifies only some of the materials ~~which that~~ are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material ~~which 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 **in the case of:**

(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) ~~in the case of~~ IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: 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. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. 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 SWMB.

(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, Appendix IX.

(8) In 40 CFR 261.21(a)(3), delete “an ignitable compressed gas as defined in 49 CFR 173.300” and substitute “a flammable gas as defined in 49 CFR 173.115(a)”.

(9) In 40 CFR 261.21(a)(4), delete “an oxidizer as defined in 49 CFR 173.151” and substitute “an oxidizer as defined in 49 CFR 173.127”.

(10) Delete 40 CFR 261.23(a)(8) and substitute “It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.”.

(11) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(12) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(15) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(16) In 40 CFR 261.5(j), delete “if it is destined to be burned for energy recovery” in two (2) places.

(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries	3369

(Solid Waste Management Board; 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)

SECTION 3. 329 IAC 3.1-6-3 IS AMENDED TO READ AS FOLLOWS:

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 ~~list lists~~ of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are ~~added to the list of acute hazardous waste:~~ **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 above listed chemical munitions 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) The commissioner may establish alternative requirements for wastes listed in this section and for wastes derived from those listed wastes. *(Solid Waste Management Board; 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)*

SECTION 4. 329 IAC 3.1-7.5 IS ADDED TO READ AS FOLLOWS:

Rule 7.5. Rejection of Hazardous Waste

329 IAC 3.1-7.5-1 Rejection prior to signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-1; 40 CFR 262

Sec. 1. A hazardous waste facility owner or operator may reject all of a hazardous waste shipment for any reason before signing the manifest. *(Solid Waste Management Board; 329 IAC 3.1-7.5-1)*

329 IAC 3.1-7.5-2 Rejection after signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-2; 40 CFR 262

Sec. 2. After the manifest is signed, a hazardous waste facility owner or operator may reject all or part of a hazardous waste shipment that:

- (1) does not conform to the terms of the agreement under which the hazardous waste facility agrees to manage the hazardous waste;**
- (2) does not conform to the requirements of the hazardous waste facility's permit;**
- (3) would require a deviation from the hazardous waste facility's standard operating procedures; or**
- (4) cannot, with reasonable efforts, be removed from the vehicle or the container in which the hazardous waste was transported.**

(Solid Waste Management Board; 329 IAC 3.1-7.5-2)

329 IAC 3.1-7.5-3 Rejection after signing manifest; compliance by facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-3; 40 CFR 262

Sec. 3. If a hazardous waste facility owner or operator rejects under section 2 of this rule all or part of a hazardous waste shipment, the hazardous waste facility shall comply with the requirements of this rule.
(Solid Waste Management Board; 329 IAC 3.1-7.5-3)

329 IAC 3.1-7.5-4 Rejection after signing manifest; facility not generator; facility not liable

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-4; IC 13-25-4; 40 CFR 262

Sec. 4. A hazardous waste facility that rejects all or part of a hazardous waste shipment under section 2 of this rule is not:

- (1) considered a generator of the rejected hazardous waste; and**
- (2) liable for any rejected part of the hazardous waste shipment under IC 13-25-4.**

(Solid Waste Management Board; 329 IAC 3.1-7.5-4)

329 IAC 3.1-7.5-5 Rejection after signing manifest; facility owner or operator duty to contact generator and secure waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-5; 40 CFR 262

Sec. 5. If a hazardous waste facility owner or operator rejects all or part of a shipment of hazardous waste after the owner or operator has signed the manifest, the hazardous waste facility owner or operator shall contact the generator, who shall direct the owner or operator to:

- (1) return the rejected shipment to the generator; or**
- (2) transport the rejected shipment to an alternate hazardous waste facility selected by the generator.**

(Solid Waste Management Board; 329 IAC 3.1-7.5-5)

329 IAC 3.1-7.5-6 Rejected waste; manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-6; 40 CFR 262

Sec. 6. (a) If the rejected load is to be returned to a generator, the generator shall complete a new manifest form in accordance with 40 CFR 262, incorporated by reference in 329 IAC 3.1-7-1, except the following:

- (1) Line out the word “generator” in Box 3 of the manifest and insert the words “rejecting facility”.**
- (2) Line out the words “designated facility” in Box 9 of the manifest and insert the word “generator”.**
- (3) In Box 15 of the manifest, write:**
 - (A) the words “REJECTED LOAD” in large block print; and**
 - (B) the manifest document number of the original manifest for the rejected load.**

(b) The rejected load manifest must accompany the shipment back to the generator. The generator retains all responsibility for transportation of the rejected waste. *(Solid Waste Management Board; 329 IAC 3.1-7.5-6)*

329 IAC 3.1-7.5-7 Rejected waste; duties of generator and rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-7; 40 CFR 262

Sec. 7. (a) When the rejected waste and the new manifest created in accordance with section 6 of this rule are received by the generator, the generator shall do the following:

- (1) Note any discrepancies in Box 19 of the new manifest.**
- (2) Line out the words “Facility Owner or Operator” in Box 20 of the new manifest and insert the words “Receiving generator”.**
- (3) Sign Box 20 of the new manifest.**
- (4) Give a copy of the new manifest to the transporter.**
- (5) Mail a copy of the new manifest to the rejecting facility not more than five (5) days after receipt of the shipment and the new manifest.**

(b) The receiving generator and rejecting facility shall retain copies of the new manifest from the rejected load for not less than three (3) years after the date of receipt. (Solid Waste Management Board; 329 IAC 3.1-7.5-7)

329 IAC 3.1-7.5-8 Rejecting facility; nonreceipt of manifest within time limit

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-8; 40 CFR 262

Sec. 8. If the rejecting facility does not receive a copy of the new manifest with the handwritten signature of the generator in Box 20 in not more than thirty-five (35) days from the date the rejected waste was accepted for transport back to the generator, the rejecting facility shall comply with the exception reporting requirements in 40 CFR 264.72, incorporated by reference in 329 IAC 3.1-9-1, or 40 CFR 265.72, incorporated by reference in 329 IAC 3.1-10-1. (Solid Waste Management Board; 329 IAC 3.1-7.5-8)

329 IAC 3.1-7.5-9 Generator; temporary retention of rejected waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-9; 40 CFR 262

Sec. 9. The generator may retain the hazardous waste at the location of receipt for not more than ninety (90) days following receipt of the rejected load before shipment to a permitted facility. The generator shall manage the waste during the retention period in accordance with 40 CFR 262.34, incorporated by reference in 329 IAC 3.1-9-1. (Solid Waste Management Board; 329 IAC 3.1-7.5-9)

329 IAC 3.1-7.5-10 Rejected waste; transfer to alternate facility; generator to forward manifest to rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-10; 40 CFR 262

Sec. 10. If the rejected load is to be shipped to an alternate hazardous waste management facility, the generator shall complete the manifest form identifying the generator as the generator and specifying the alternate designated facility. The generator shall forward the manifest to the rejecting facility to accompany the shipment to the alternate facility. (Solid Waste Management Board; 329 IAC 3.1-7.5-10)

329 IAC 3.1-7.5-11 Mixture of waste from multiple generators by transporter; responsibilities

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-11; 40 CFR 262

Sec. 11. If hazardous waste from more than one (1) generator is mixed together by the transporter before delivery to the hazardous waste facility, the transporter shall assume all responsibility for proper disposition of the rejected waste, including the responsibility to:

(1) designate an alternate hazardous waste facility; and

(2) assure delivery to the designated alternate hazardous waste facility.

(Solid Waste Management Board; 329 IAC 3.1-7.5-11)

SECTION 5. 329 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

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 that~~ are not identified or listed in 40 CFR 268, Subpart C **or Subpart D**, as incorporated in this rule.
- (5) ~~In Delete~~ 40 CFR 268.2(e) delete “40 CFR 761.3” and insert “329 IAC 4.1”; **and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.**
- ~~(6) Delete 40 CFR 268.8.~~
- ~~(7)~~ **(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)(5)(i):~~ **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.
- ~~(8)~~ **(7)** Delete 40 CFR 268, Subpart B.
- ~~(9)~~ **(8)** In 40 CFR 268, Subpart C, all references to effective dates ~~which that~~ precede the effective date of this rule shall be replaced with the effective date of this rule.
- ~~(10)~~ **(9)** Delete 40 CFR 268.33.

(Solid Waste Management Board; 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)

SECTION 6. 329 IAC 3.1-13-2 IS AMENDED TO READ AS FOLLOWS:

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:
 - (A) denying;
 - (B) issuing;
 - (C) modifying;
 - (D) revoking and reissuing; and
 - (E) 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”.**

~~(10)~~ **(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~~ **that** 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 ~~his~~ **or** her discretion, reopen the comment period.

~~(11)~~ **(12)** Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.

~~(12)~~ **(13)** Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.

~~(13)~~ **(14)** Delete 40 CFR 270.64.

~~(14)~~ **(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 Board; 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)

SECTION 7. 329 IAC 13-3-1, PROPOSED TO BE AMENDED AT 26 IR 1673, SECTION 39, IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2001.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261, Subpart D, revised as of July 1, 2001, are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, revised as of July 1, 2001. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII, revised as of July 1, 2001. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

- (i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in ~~329 IAC 13-4-5(c)~~, **329 IAC 13-4-5(3)**, to reclaim metalworking oils or fluids.

The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2001, are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, revised as of July 1, 2001, are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article; and

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), revised as of July 1, 2001.

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

- (1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.
- (2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.
- (3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.
- (4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.
- (5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.
- (6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

~~(i) In addition to the requirements of this article, marketers and burners of used oil who market~~ Used oil containing ~~any quantifiable level of polychlorinated biphenyls (PCBs) are less than fifty (50) parts per million~~ PCB is subject to the requirements ~~found at 40 CFR 761.20(e), revised as of June 24, 1999; of this article unless, because of dilution, it is regulated under 329 IAC 4.1 as a used oil containing PCB at fifty (50) parts per million or greater. Used oil containing PCB subject to the requirements of this article may also be subject to the prohibitions and requirements found in 329 IAC 4.1.~~

(j) Used oil containing PCB at concentrations of fifty (50) parts per million or greater is not subject to the requirements of this article, but is subject to regulation under 329 IAC 4.1. No person may avoid these provisions by diluting used oil containing PCB, unless otherwise specifically provided for in this article or in 329 IAC 4.1.

(k) The use of waste oil that contains equal to or greater than two (2) parts per million PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to:

- (1) road oiling;**
- (2) general dust control;**
- (3) use as a pesticide or herbicide carrier; and**
- (4) use as a rust preventative on pipes.**

(l) In addition to any applicable requirements under 329 IAC 13-8 and 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing equal to or greater than two (2) parts per million PCB must comply with section 4 of this rule.

~~(m) 40 CFR 261 and 40 CFR 761 are available from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402-9328. (Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238)~~

SECTION 8. 329 IAC 13-3-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 13-3-4 Marketing used oil containing any quantifiable level of PCB

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 4. (a) In addition to any applicable requirements in 329 IAC 13-8 through 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing greater than or equal to two (2) parts per million PCB are subject to the requirements of this section.

(b) Used oil containing greater than or equal to two (2) parts per million PCB may be marketed only to the following:

- (1)** Qualified incinerators as defined in 40 CFR 761.3, incorporated by reference in 329 IAC 4.1-2-1.
- (2)** Marketers who market off-specification used oil for energy recovery only to other marketers who have complied with 329 IAC 13-9-4.
- (3)** Burners identified in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2). Only burners in the automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 329 IAC 13-4-4 are met. The commissioner may grant a variance for a boiler that does not meet the criteria in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2) after considering the criteria listed in 40 CFR 260.32(a) through 40 CFR 260.32(f), incorporated by reference in 329 IAC 3.1-5-4. The applicant must address the relevant criteria contained in 40 CFR 260.32(a) through 40 CFR 260.32(f) in an application to the commissioner.

(c) Used oil to be burned for energy recovery is presumed to contain greater than or equal to two (2) parts per million PCB unless the marketer obtains test analyses or other information that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB.

- (1)** The person who first claims that a used oil fuel does not contain greater than or equal to two (2) parts per million PCB must obtain analyses or other information to support that claim.
- (2)** Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in 40 CFR 761.60(g)(2), incorporated by reference in 329 IAC 4.1-4-1. However, for purposes of this article, if any PCBs at a concentration of fifty (50) parts per million or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of fifty (50) parts per million or greater for purposes of complying with the disposal requirements of this part.
- (3)** Other information documenting that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil does not contain greater than or equal to two (2) parts per million PCB.

(d) Persons subject to this section shall comply with the following restrictions on burning:

- (1)** Used oil containing greater than or equal to two (2) parts per million PCB may be burned for energy recovery only in the combustion facilities identified in subsection (b) when such facilities are operating at normal operating temperatures. Used oil containing greater than or equal to two (2) parts per million PCB must not be burned during either startup or shutdown operations. Owners and operators of such facilities are burners of used oil fuels.
- (2)** Before a burner accepts from a marketer the first shipment of used oil fuel containing greater than or equal to two (2) parts per million PCB, the burner must provide the marketer a one-time written and signed notice certifying that the burner:
 - (A)** has complied with any notification requirements applicable to qualified incinerators as defined in 40 CFR 761.3, incorporated in 329 IAC 4.1-2-1, or to burners regulated under 329 IAC 13-8; and
 - (B)** will burn the used oil only in a combustion facility identified in subsection (b) and identify the class of burner he or she qualifies.

(e) The following record keeping requirements are in addition to the record keeping requirements for

marketers found in 329 IAC 13-9-3(b), 329 IAC 13-9-5, and 329 IAC 13-9-6, and for burners found in 329 IAC 13-8-6 and 329 IAC 13-8-7:

(1) Marketers who first claim that the used oil fuel contains greater than or equal to two (2) parts per million PCB must include among the records required by:

(A) 329 IAC 13-9-3(b) and 329 IAC 13-9-5(b) through 329 IAC 13-9-5(c), copies of the analysis or other information documenting his or her claim; and

(B) 329 IAC 13-9-5(a), 329 IAC 13-9-5(c), and 329 IAC 13-9-6, a copy of each certification notice received or prepared relating to transactions involving used oil containing PCB.

(2) Burners must include among the records required by 329 IAC 13-8-6 and 329 IAC 13-8-7, a copy of each certification notice required by subsection (d)(2) that the burner sends to a marketer.

(Solid Waste Management Board; 329 IAC 13-3-4)

SECTION 9. 329 IAC 13-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-9-5 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner.
- (2) The name and address of the burner who will receive the used oil.
- (3) The EPA identification number of the transporter who delivers the used oil to the burner.
- (4) The EPA identification number of the burner.
- (5) The quantity of used oil shipped.
- (6) The date of shipment.

(b) A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under 329 IAC 13-3-2 must keep a record of each shipment of used oil to ~~an on-specification~~ **the facility to which it delivers the used oil.** ~~burner.~~ Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment.
- (2) The quantity of used oil fuel delivered.
- (3) The date of shipment or delivery.
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under section 3(a) of this rule.

(c) The records described in this section must be maintained for at least three (3) years. *(Solid Waste Management Board; 329 IAC 13-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 10. **SECTION 4 of this document takes effect July 1, 2005.**

Notice of First Meeting/Hearing

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on **August 17, 2004, at 1:30 p.m.**, at the Indiana Government Center-South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on amendments to the rules for the hazardous waste management program at 329 IAC 3.1.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1,

1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or dial (800) 451-6027 in Indiana, press "0" and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 234-1208 (V) or (317) 233-6565 (TT). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file and open for public inspection at the Indiana Department of Environmental Management Central File Room, Indiana Government Center-North, 100 North Senate Avenue, Room N1201, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality