TITLE 329 SOLID WASTE MANAGEMENT DIVISION

FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
LSA Document #19-411

TITLE 329 CODE OF FEDERAL REGULATIONS AND ADMINISTRATIVE UPDATES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 329 IAC 1, 329 IAC 7.1, 329 IAC 10, 329 IAC 11, and 329 IAC 13 concerning references to the Code of Federal Regulations (CFR) to update them to the July 1, 2017, edition, and for the repeal of 329 IAC 3.1-2. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: 329 IAC 1-1-4; 329 IAC 3.1-2-1; 329 IAC 3.1-2-2; 329 IAC 3.1-2-3; 329 IAC 3.1-2-4; 329 IAC 3.1-2-5; 329 IAC 3.1-2-6; 329 IAC 3.1-2-7; 329 IAC 3.1-2-8; 329 IAC 3.1-2-9; 329 IAC 3.1-2-10; 329 IAC 3.1-2-11; 329 IAC 3.1-2-12; 329 IAC 3.1-2-13; 329 IAC 3.1-2-14; 329 IAC 3.1-2-15; 329 IAC 3.1-2-16; 329 IAC 7.1-1-1; 329 IAC 7.1-3-1; 329 IAC 10-1-2.5; 329 IAC 10-1-5; 329 IAC 10-8.2-4; 329 IAC 10-8.2-6; 329 IAC 10-11-2.5; 329 IAC 10-20-14.1; 329 IAC 10-21-11; 329 IAC 11.5-2-21; 329 IAC 11.6-2-21; 329 IAC 13-6-5; 329 IAC 13-7-4; 329 IAC 13-8-4.

AUTHORITY: IC 13-14-9; IC 13-19-3.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the IC 13-14-9 environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the draft rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:
  (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    (i) is or will be applicable to Indiana; and
    (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  (C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
  (A) exposing the rule to diverse public comment under IC 13-14-9-3 or IC 13-14-9-4;
  (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
  (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Updating Indiana waste rules in Title 329 to the July 1, 2017, version of the CFR will provide updated federal requirements to regulated entities, with exception of those printed on or after July 1, 2017. This rulemaking revises the date associated with the CFR citations and corrects incorporation by reference language, as needed. Revisions are made to the CFR references in 329 IAC 1 (General Provisions), 329 IAC 7.1 (Priority Ranking System for Hazardous Substances Response Sites), 329 IAC 10 (Solid Waste Land Disposal Facilities), 329 IAC 11 (Solid Waste Processing Facilities), and 329 IAC 13 (Used Oil Management), unless a previous edition is identified in a specific rule.

In addition, 329 IAC 3.1-2 concerning requests for information is being repealed because the requirements can be found in statute and this rule is no longer used by the department. Aside from the repeal of the obsolete requests for informative provisions in 329 IAC 3.1-2, this rule does not make any changes to the hazardous waste rules in 329 IAC 3.1.

IDEM has reviewed the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. The rule also was reviewed to ensure compliance with rule drafting guidelines, and for opportunities to streamline, simplify, and clarify the language. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of rulemaking.

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

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Updating the references to the CFR to indicate the July 1, 2017, edition, and updating citations incorporated by reference to reflect current federal language provides consistency between federal and state rules, and does not impose any additional requirements to which the regulated sources are not already subject. The proposed amendments to 329 IAC 1, 329 IAC 7.1, 329 IAC 10, 329 IAC 11, and 329 IAC 13 and the repeal of 329 IAC 3.1-2 will have no fiscal impact because the amendments are an incorporation of existing federal regulations, and no impact beyond that already imposed by the federal regulation is imposed by this rulemaking. The additional updates and corrections to the language in this rulemaking will have no fiscal impact.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Krystal Hackney, Rules Development Branch, Office of Legal Counsel at (317) 232-3158 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027

emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking to update the references to the Code of Federal Regulations to the July 1, 2017, edition, and to make administrative updates and corrections to other sections in 329 IAC 1, 329 IAC 7.1, 329 IAC 10, 329 IAC 11, and 329 IAC 13 and to repeal 329 IAC 3.1-2. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law to adopt updates to the CFR as established by the U.S. Environmental Protection Agency.

(3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it updates references to be consistent with federal requirements and clarifies and streamlines existing rule language.

(4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the draft rule from the first or second written comment period under IC 13-14-9-3 or IC 13-14-9-4, or from the first public hearing under IC 13-14-9-5(a)(1).

(5) The draft rule is hereby incorporated into these findings.

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Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:
LSA Document #19-411 Title 329 CFR and Administrative Updates
Krystal Hackney
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to khackney1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than September 27, 2019. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Krystal Hackney, Rules Development Branch, Office of Legal Counsel, (317) 232-3158 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 1-1-4 Reference to federal acts

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

Sec. 4. (a) Unless otherwise indicated, references in ~~these rules (329 IAC)~~ **this title** to the Resource Conservation and Recovery Act (RCRA) ~~shall~~ mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984, as amended, ~~4~~ **42** U.S.C. §6901, et seq.

(b) Unless otherwise indicated, references in ~~these rules (329 IAC)~~ **this title** to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ~~shall~~ mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. §9601, et seq.

(c) Unless otherwise indicated, references in ~~these rules (329 IAC)~~ **this title** to the Toxic Substances Control Act **(TSCA) mean the Toxic Substances Control Act** as amended by the Asbestos Hazard Emergency Response Act of 1986 **and the Frank R. Lautenberg Chemical Safety for the 21st Century Act,** as amended, 15 U.S.C. §2601 et seq.

~~(b)~~ **(d)** Unless otherwise indicated, ~~as in 329 IAC 3.1,~~ references **in this title** to the Code of Federal Regulations (CFR) ~~shall~~ mean the ~~1987~~ **July 1, 2017,** version.

(Solid Waste Management Division; 329 IAC 1-1-4; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA)

SECTION 2. 329 IAC 7.1-1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7.1-1-1 Applicability and scope

Authority: IC 13-14-8; IC 13-19-3; IC 13-23-13-7; IC 13-24-1; IC 13-25-4-7
Affected: IC 13-25-4

Sec. 1. (a) This article applies to hazardous substances response sites not on the National Priorities List (40 CFR 300, Appendix B), ~~(1987 Edition)),~~ not in the leaking underground storage tank program, or not in any other departmental corrective action or remediation program, for which action by the commissioner may be required to:
(1) prevent the release of a listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant;
(2) control, contain, isolate, neutralize, remove, store, or dispose of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum, petroleum constituent, or contaminant already released into or on the air, land, or waters of this state; or
(3) provide another appropriate response.

(b) Nothing in this article ~~shall~~ **may** be construed to limit the authority of the commissioner to:
(1) respond to the release or threatened release of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum or petroleum constituent, or contaminant; or
(2) take any other action provided for by statute or rule relating to the release or threatened release of a hazardous substance, petroleum, petroleum constituent, or contaminant.

(Solid Waste Management Division; 329 IAC 7.1-1-1; filed Jun 5, 2008, 11:19 a.m.: 20080702-IR-329060147FRA; readopted filed Aug 6, 2014, 9:49 a.m.: 20140903-IR-329140187BFA)

SECTION 3. 329 IAC 7.1-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7.1-3-1 Incorporation by reference

Authority: IC 13-14-8; IC 13-19-3; IC 13-23-13-7; IC 13-24-1; IC 13-25-4-7
Affected: IC 13-25-4

Sec. 1. ~~(a)~~ For purposes of this article, 40 CFR 300, Appendix B*, ~~(1987 Edition),~~ National Oil and Hazardous

Substance Pollution Contingency Plan (hereinafter "National Contingency Plan") is incorporated by reference.

~~(b) Copies of the Code of Federal Regulations (CFR) can be obtained from the Government Printing Office, Washington, D.C. 20402.~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 7.1-3-1; filed Jun 5, 2008, 11:19 a.m.: 20080702-IR-329060147FRA; readopted filed Aug 6, 2014, 9:49 a.m.: 20140903-IR-329140187BFA)

SECTION 4. 329 IAC 10-1-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-1-5 Variances

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-14-8; IC 13-18; IC 36-9-30

Sec. 5. (a) The commissioner may grant a variance from compliance with this article in accordance with IC 13-14-8.

(b) No term, condition, or requirement granted under this section may be less stringent than requirements of 40 CFR 257* and 40 CFR 258*. ~~(October 9, 1991) and the amendments to the financial assurance criteria for owners and operators of municipal solid waste landfill facilities (60 FR 40104, August 7, 1995).~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 10-1-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 5. 329 IAC 10-8.2-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-8.2-4 Regulated asbestos-containing materials

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-17-6; IC 13-19

Sec. 4. (a) Regulated asbestos-containing materials, except for Category II nonfriable asbestos-containing materials regulated under subsection (b), must be managed in accordance with ~~the rules of the board at~~ 326 IAC 14-10, 40 CFR 61, Subpart M*, ~~revised as of February 12, 1999,~~ and the following:

(1) The generator ~~shall~~ **must** provide the solid waste land disposal facility with sufficient notice in advance of the disposal ~~such~~ **so** that the facility may prepare to accept the regulated asbestos-containing material.

(2) All regulated asbestos-containing material must be handled in accordance with the wetting, packaging, and labeling provisions of 40 CFR 61.145(c)* ~~revised as of January 16, 1991,~~ and 40 CFR 61.150(a)*. ~~revised as of January 16, 1991.~~

(3) Each load of regulated asbestos-containing material must be accompanied by a waste shipment record prepared on one (1) of the following:

(A) A form provided by the department.

(B) A form produced by the generator that includes all the information included on the form provided by the department.

(4) All regulated asbestos-containing material must be disposed of in accordance with the ~~provisions of the~~ following:

(A) 40 CFR 61.154*. ~~revised as of January 16, 1991.~~

(B) ~~The rules of the board at~~ 326 IAC 14-10.

~~(C) The following:~~

~~(i)~~ **(C)** There must not be direct physical contact between regulated asbestos-containing material and heavy equipment during disposal and covering operations.

~~(ii)~~ **(D)** All regulated asbestos-containing material must be covered with soil, approved alternative material, or solid waste before compaction with heavy equipment or within twenty-four (24) hours of receipt of the waste to prevent airborne release.

~~(iii)~~ **(E)** Any regulated asbestos-containing material that is improperly packaged or in which packaging has been damaged must be placed in the working face of the MSWLF unit or non-MSWLF unit and covered immediately after placement of the waste.

~~(iv)~~ **(F)** A certified operator shall be present at the MSWLF unit or non-MSWLF unit during all handling and disposal of regulated asbestos-containing material to ensure compliance with this subsection. The certified operator shall be certified in accordance with ~~the rules of the board at~~ 329 IAC 12.

~~(v)~~ **(G)** All personnel involved in off-loading or in covering shall use appropriate personal protective equipment as necessary to prevent exposure to any airborne release of asbestos fibers during disposal operations.

~~(vi)~~ **(H)** The solid waste land disposal facility must have a written contingency plan to safely control torn and broken containers. Dedicated equipment and supplies must be maintained at the facility to properly handle spilled or improperly packaged or wetted regulated asbestos-containing material. If release of asbestos-containing waste materials occurs, the solid waste land disposal facility must take immediate corrective action directed by the certified operator.

(b) Category II nonfriable asbestos-containing material, as defined in 40 CFR 61.141*, ~~revised as of June 19, 1995,~~ that has not been made friable by forces reasonably expected to act on the material before disposal must be managed in accordance with the following:

(1) Subsection (a)(1).

(2) Subsection (a)(3).

(3) Subsection (a)(4).

(4) ~~Label the~~ Containers or wrapped materials ~~using~~ **must be labeled with** warning labels that meet the requirements of 29 CFR 1910.1001(j)(4)*, ~~revised as of January 8, 1998,~~ and include the information in the following figure:

DANGER CONTAINS ASBESTOS FIBERS AVOID CREATING DUST CANCER AND LUNG DISEASE HAZARD

(5) For asbestos-containing waste material to be transported off the facility site, ~~label~~ containers or wrapped materials **must be labeled** with the name of the waste generator and the location at which the waste was generated.

~~(c) 29 CFR 1910 and 40 CFR 61 are available from the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, or may be viewed at www.gpo.gov.~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana, 46204.**

(Solid Waste Management Division; 329 IAC 10-8.2-4; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3962; readopted filed Aug 5, 2010, 10:56 a.m.: 20100825-IR-329100228BFA; readopted filed Jun 6, 2016, 11:52 a.m.: 20160706-IR-329160144BFA; filed Aug 1, 2016, 3:41 p.m.: 20160831-IR-329140111FRA, eff Jan 1, 2017)

SECTION 6. 329 IAC 10-8.2-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-8.2-6 Waste pesticides or wastes contaminated with pesticides

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-19; IC 15-16-4-68

Sec. 6. Waste pesticides or wastes contaminated with pesticides must be disposed of in accordance with **the**

following:

(1) The label required by 40 CFR 156.10(a)*. ~~revised as of February 23, 1998, available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238; and~~

(2) IC 15-16-4-68.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 10-8.2-6; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3963; readopted filed Aug 5, 2010, 10:56 a.m.: 20100825-IR-329100228BFA; readopted filed Jun 6, 2016, 11:52 a.m.: 20160706-IR-329160144BFA; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA)

SECTION 7. 329 IAC 10-11-2.5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-11-2.5 Permit application for new land disposal facility and lateral expansions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 4-21.5-3-5; IC 13-11-2-265; IC 13-14-11-3; IC 13-20-21; IC 14-31-1; IC 36-7-4; IC 36-9-30

Sec. 2.5. (a) In addition to the application requirements given ~~at~~ **in** section 2.1 of this rule, a complete application for a solid waste land disposal facility permit or for a major modification of a solid waste land disposal facility permit for a lateral expansion must include all the following information:

(1) Detailed plans and design specifications as required by:
  (A) 329 IAC 10-15 through 329 IAC 10-19 and 329 IAC 10-22, as applicable;
  (B) 329 IAC 10-24 through 329 IAC 10-27 and 329 IAC 10-30, as applicable; or
  (C) 329 IAC 10-32 through 329 IAC 10-35 and 329 IAC 10-37, as applicable.

(2) Closure and post-closure plans as required by:
  (A) 329 IAC 10-22-2 and 329 IAC 10-23-3, as applicable;
  (B) 329 IAC 10-30-4 and 329 IAC 10-31-3, as applicable; or
  (C) 329 IAC 10-37-4 and 329 IAC 10-38-3, as applicable.

(3) The detailed plans and design specifications required by subdivision (1) and the closure and post-closure plans required by subdivision (2) must be certified by a registered professional engineer and must be properly titled.

(4) A description of the financial instrument that will be used to achieve compliance with financial responsibility provisions of 329 IAC 10-39.

(5) Documents necessary to establish ownership or other tenancy, such as an option to purchase, of the real estate upon which the solid waste land disposal facility to be permitted is located. The documentation must include a certified copy of the deed to the subject real estate showing ownership in the person identified as the owner in the application or the deed and evidence satisfactory to the commissioner that ownership will be transferred to the proper person for purposes of this rule, if not already done, prior to operation of the solid waste land disposal facility.

(6) Documentation that proper zoning approvals have been obtained, including the following, if applicable:
  (A) A copy of the zoning requirements, if any, for solid waste facilities in the area where the solid waste land disposal facility is to be located.
  (B) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area where the solid waste land disposal facility is to be located.
  (C) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if a change in the zone maps is required for the area where the solid waste land disposal facility is to be located.
  (D) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if ~~such~~ **the** amendment is required for the area where the solid waste land disposal facility is to be located.
  (E) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-918.2 through IC 36-7-4-918.5 if ~~such~~ **the** approval is required for the area where the solid waste land disposal facility is to be located.
  (F) The status of any appeal of any zoning determination as described in clauses (B) through (E) and, if none is pending, the date by which the appeal must be initiated.

(7) A United States Geological Survey topographical quadrangle map seven and one-half (7 1/2) minute, or

equivalent, to include all areas within two (2) miles of the proposed facility boundaries with real property boundaries and proposed solid waste boundaries clearly delineated.

(8) Documentation of the base flood elevation within one-fourth (1/4) mile of the proposed facility boundaries. Either of the following forms of documentation are acceptable:

(A) A letter from the department of natural resources.

(B) A national flood insurance program map.

(9) A scaled map that depicts the following features, which are known to the applicant or are discernable from public records, on and within one-half (1/2) mile of the proposed facility boundaries:

(A) Airports.

(B) Buildings.

(C) City, township, county, state, or national forests or parks.

(D) Coal borings.

(E) Culverts.

(F) Drainage tiles.

(G) Dwellings.

(H) Fault areas.

(I) Floodplains, floodway fringes, and floodways.

(J) Gas or oil wells.

(K) Hospitals.

(L) Legal drains.

(M) Nature preserves regulated under IC 14-31-1 or any critical habitats as contained in 50 CFR 17.95* or 50 CFR 17.96*. ~~revised as of October 1, 2002.~~

(N) Pipelines.

(O) Power lines.

(P) Roads.

(Q) Schools.

(R) Sewers.

(S) Sinkholes.

(T) Springs and seeps.

(U) Surface or underground mines.

(V) Swamps.

(W) Water courses or surface water, including reservoirs.

(X) Wells.

(Y) Wetlands.

Where any of these features do not exist, it should be noted either on the map or in an attached document.

(10) Locations where storm water may be directly discharged into ground water, such as **an** abandoned ~~wells~~ **well** or ~~sinkholes. Please note~~ **sinkhole, or a notation** if none exist.

(11) Locations of specific points where storm water discharge will leave the facility boundary.

(12) Names of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water of the storm water discharge.

(13) Identification of the regulated municipal separate storm sewer system entity receiving the storm water discharge, if applicable.

(14) A soil map and related description data as published by the United States Department of Agriculture, Natural Resources Conservation Service.

(15) Current United States Geological Survey (USGS) hydrologic unit code up to fourteen (14) digits.

(16) Well logs and a topographic map indicating the location and identifying with respect to the drilling logs, all wells within one (1) mile of the proposed facility boundaries that are on file with the department of natural resources.

(17) A survey must be conducted for any residences or occupied buildings within one-fourth (1/4) of a mile of the proposed facility boundaries that do not have a well log. The survey is to determine whether wells that do not have well logs on file with the department of natural resources are present and obtain any information regarding these wells. A summary of the results of the survey and any information gained must be included with the application.

(18) The name and address of all owners or last taxpayers of record of property:

(A) located within one (1) mile of the proposed solid waste boundaries of a solid waste land disposal facility; and

(B) of adjoining land that is within one-half (1/2) of a mile of the solid waste boundary.

(19) A signed affidavit to the department agreeing to notify adjoining landowners as required in 329 IAC 10-12-1(b)(1).

(20) The following information relative to wetlands under 329 IAC 10-16-3 and other waters defined under IC 13-11-2-265:

(A) A copy of the U.S. Army Corps of Engineers Section 404 of the Clean Water Act permit and a copy of the Indiana department of environmental management Section 401 water quality certification or documentation acceptable to the department that a Section 404 permit and Section 401 water quality certification are not required.
(B) Any other mitigation plans required by any other government agency including permit conditions or restrictions placed on the siting of the solid waste land disposal facility in relationship to any other waters defined under IC 13-11-2-265.

(b) Restricted waste site Type III and construction/demolition landfills are exempt from submitting the information required in subsection (a)(9).

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 10-11-2.5; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3789; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1802, eff Apr 1, 2004; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA)

SECTION 8. 329 IAC 10-20-14.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-14.1 Alternative daily cover

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-19-3; IC 13-20; IC 36-9-30

Sec. 14.1. (a) The owner, operator, or permittee of an MSWLF unit that is constructed with a leachate collection system and composite liner in accordance with 329 IAC 10-17 may apply a material as alternative daily cover only in accordance with this section and any requirements in the facility permit. The following materials must not be applied as alternative daily cover:
(1) A solid waste that contains a toxicity characteristic contaminant listed in 40 CFR 261.24, Table 1* ~~revised as of July 1, 2002,~~ at a level equal to or greater than seventy-five percent (75%) of the regulatory level for that contaminant, determined in accordance with 329 IAC 3.1.
(2) Putrescible waste.
(3) Infectious waste.
(4) Baghouse dust.
(5) Biosolid that does not meet Class A criteria described in ~~the rules of the water pollution control board at~~ 327 IAC 6.1-4-13(c).
(6) Material containing PCB that is not listed in subsection (c) or (e).

(b) Unless permitted otherwise under subsection (e), all material used as alternative daily cover must meet the following performance standards:
(1) The material must meet all requirements of this article for disposal in a municipal solid waste landfill.
(2) Use of the material must not result in:
(A) blowing litter;
(B) blowing dust; or
(C) disease vectors.
(3) The material must not contribute to:
(A) fire;
(B) odor; or
(C) scavenging.
(4) The material must not:
(A) be composed of more than twenty percent (20%) particles smaller than six hundred (600) microns; or
(B) have a bulk density less than one (1) gram per cubic centimeter.
(5) The material must not be soluble in water.
(6) A dry material must not exhibit a pH of:
(A) less than or equal to five (5); or
(B) greater than or equal to ten (10);
when tested in accordance with Method 9045C*, "Soil and Waste pH", described in U.S. Environmental

Protection Agency Publication SW-846.

(7) When applied as alternative daily cover in accordance with this section, the material must not present a threat to human health or the environment as follows:

(A) The material must not exceed an exposure limit listed in any of the following:

(i) 29 CFR 1910, Subpart Z*. ~~revised as of July 1, 2003.~~

(ii) 29 CFR 1926.55*. ~~revised as of July 1, 2003.~~

(iii) 29 CFR 1926.62*. ~~revised as of July 1, 2003.~~

~~29 CFR 1910 and 29 CFR 1926* are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.~~

(B) The material must not be ignitable under conditions that exist at the working face of the landfill.

(8) Waste must not be visible after application of the material as alternative daily cover.

(c) The owner, operator, or permittee of the municipal solid waste landfill shall apply for an insignificant facility modification in accordance with 329 IAC 10-3-3(b) to apply any of the following materials as alternative daily cover:

(1) Altered tires.

(2) Wood chips.

(3) Compost.

(4) Foundry sand.

(5) Geotextile.

(6) Plastic tarpaulin.

(7) Material excluded from regulation by 329 IAC 10-3-1(1).

(8) Dewatered publicly owned treatment works sludge.

(9) Dewatered paper sludge.

(10) Petroleum contaminated soil.

(11) Soil contaminated with vegetable oil.

(12) Material containing PCB allowed under 40 CFR 761.62(d)*. ~~revised as of July 1, 1999*.~~

(13) Material containing less than fifty (50) parts per million PCB that:

(A) results from a source that contained less than fifty (50) parts per million PCB;

(B) would otherwise meet the definition of PCB bulk product waste in 40 CFR 761.3*; ~~revised as of July 1, 1999*;~~ and

(C) is listed in 40 CFR 761.62(b)(1)*. ~~revised as of July 1, 1999*.~~

(14) Other material containing less than or equal to ten (10) parts per million PCB not as a result of dilution.

~~40 CFR 761* is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.~~

(d) The owner, operator, or permittee of the municipal solid waste landfill shall apply for an insignificant facility modification in accordance with 329 IAC 10-3-3(c) to apply a material that:

(1) is not listed in subsection (c); and

(2) meets the performance standards in subsection (b) when delivered to the working face of the landfill.

(e) The owner, operator, or permittee of the municipal solid waste landfill shall apply for a minor modification in accordance with 329 IAC 10-11-6 to apply any of the following materials as alternative daily cover:

(1) A material that:

(A) is not listed in subsection (c); and

(B) does not meet the performance standards in subsection (b) when delivered to the working face of the landfill but can be made to meet the performance standards using additional management practices at the landfill.

The application for a minor modification must describe the management practices that will be used to make the material meet the performance standards in subsection (b).

(2) Material that:

(A) contains less than fifty (50) parts per million PCB;

(B) results from a source that contains less than fifty (50) parts per million PCB; and

(C) is not listed in subsection (c).

(f) The owner, operator, or permittee of a municipal solid waste cell or unit that applies alternative daily cover shall comply with all of the following requirements:

(1) Prior to the initial use of any material as alternative daily cover, the owner, operator, or permittee shall notify the ~~Agriculture and~~ Solid Waste Compliance Section, Office of Land Quality, at least five (5) working

days before the initial use of any material as alternative daily cover.
(2) Alternative daily cover must only be applied:
(A) on areas that will have additional solid waste deposited within the next seven (7) working days; or
(B) as approved by the commissioner.
(3) Alternative daily cover that is exposed for longer than seven (7) working days must be covered with soil:
(A) as required by section 13(a) of this rule; or
(B) as approved by the commissioner.
(4) Alternative daily cover must be placed on the working face by the end of each day of operation.
(5) Alternative daily cover, except geotextile or plastic tarpaulin, must be applied:
(A) at a minimum thickness of six (6) inches; or
(B) as approved by the commissioner.
(6) Any solid waste that is not covered by alternative daily cover must be covered in accordance with section 13(a) of this rule.
(7) Alternative daily cover, except geotextile or plastic tarpaulin, must:
(A) not be reapplied as daily cover; or
(B) be applied as approved by the commissioner.
(8) The owner, operator, or permittee shall retain the following information in the operating record for a period of one (1) year:
(A) The source of the alternative daily cover material.
(B) Documentation used to determine compliance with subsection (a)(1).
(C) Documentation that the alternative daily cover material complies with the performance standards under subsection (b), if applicable.
(9) Material used as alternative daily cover must be stockpiled in accordance with:
(A) the provisions of this article regarding storm water pollution prevention; and
(B) section 15 of this rule.
(10) A supply of daily cover material that meets the requirements of section 13 of this rule must be readily available if the material used as alternative daily cover does not meet the requirements of this section.

(g) The commissioner may modify or revoke an approval under subsections (c) through (e) for application of any material that does not meet the requirements of this section.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 10-20-14.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3829; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3967; errata filed Oct 7, 2004, 11:50 a.m.: 28 IR 608)

SECTION 9. 329 IAC 10-21-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-11 Ground water protection standards

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) For each constituent listed in **Table 2 in** section 16 of this rule ~~(Table 2)~~ and for every secondary constituent, as identified in subsection (c), the ground water protection standard ~~shall~~ **must** be considered to be:
(1) the maximum contaminant level (MCL) for that constituent, if a maximum contaminant level has been established;
(2) the secondary maximum contaminant level for that constituent, if a secondary maximum contaminant level has been established; or
(3) the background ground water quality established for that constituent, based on background ground water monitoring data approved by the commissioner, if:
(A) a maximum contaminant level or a secondary maximum contaminant level has not been established; or
(B) for a given constituent, the background ground water quality is higher than the maximum contaminant level identified in subdivision (1), the secondary maximum contaminant level identified in subdivision (2), or the health-based levels identified in subsection (b).

(b) The commissioner may establish an alternative ground water protection standard for constituents for which an MCL has not been established in accordance with the following:

(1) The alternative ground water protection standards must be appropriate public health and environmental protection based concentrations that satisfy the following criteria:

(A) The ground water protection standard is derived in a manner consistent with the federal **United States** Environmental Protection Agency guidelines for assessing risks of environmental pollutants in accordance with ~~51 FR 33992, 51 FR 34006, 51 FR 34014, and 51 FR 34028, September 24, 1986.~~ **the following Federal Register notices published on September 24, 1986:**

(i) 51 FR 33992*.

(ii) 51 FR 34006*.

(iii) 51 FR 34014*.

(iv) 51 FR 34028*.

(B) The ground water protection standard is based on scientifically valid studies, conducted in accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice Standards as defined in 40 CFR 792*. ~~August 17, 1989.~~

(C) For carcinogens, the ground water protection standard represents a concentration associated with an excess lifetime cancer risk level within the 1×10^{-5} to 1×10^{-6} range.

(D) For systemic toxicants, the ground water protection standards represent a concentration to which the human population could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

(2) The commissioner may consider the following in establishing ground water protection standards:

(A) Multiple contaminants in the ground water.

(B) Exposure threats to sensitive environmental receptors.

(C) Other site-specific exposure or potential exposure to ground water.

(c) For the purposes of this rule, secondary constituents are identified as the following:

(1) Ammonia.

(2) Chloride.

(3) Iron.

(4) Manganese.

(5) Sodium.

(6) Sulfate.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 10-21-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1873; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3854)

SECTION 10. 329 IAC 11.5-2-21 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.5-2-21 "Waste determination" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-30-2; IC 36-9-30

Sec. 21. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at 329 IAC 3.1, the PCB rules at 329 IAC 4.1, or the solid waste rules at 329 IAC 10. The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C*, or equivalent methods approved under 40 CFR 260.21* to ascertain the following:

(1) The waste is a hazardous waste under 40 CFR 262.11* and is regulated under 329 IAC 3.1 because of the following:

(A) The waste is not excluded from regulation under 40 CFR 261.4*.

(B) The waste is a listed waste under 40 CFR 261, Subpart D*.

(C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C*.

(2) The waste contains regulated amounts of PCBs and is regulated under 329 IAC 4.1.
(3) The waste is a solid waste and can be disposed of under 329 IAC 10.
(4) The waste is a solid waste and can be processed under 329 IAC 11.

~~*Note: All federal regulations cited in this section are incorporated by reference as revised July 1, 2008. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or online at http://bookstore.gpo.gov/. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 11.5-2-21; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA; readopted filed Jun 14, 2019, 2:00 p.m.: 20190710-IR-329190249BFA)

SECTION 11. 329 IAC 11.6-2-21 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.6-2-21 "Waste determination" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-30-2; IC 36-9-30

Sec. 21. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at 329 IAC 3.1, the PCB rules at 329 IAC 4.1, or the solid waste rules at 329 IAC 10. The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C*, or equivalent methods approved under 40 CFR 260.21* to ascertain the following:

(1) The waste is a hazardous waste under 40 CFR 262.11* and is regulated under 329 IAC 3.1 because of the following:
  (A) The waste is not excluded from regulation under 40 CFR 261.4*.
  (B) The waste is a listed waste under 40 CFR 261, Subpart D*.
  (C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C*.
(2) The waste:
  (A) contains regulated amounts of PCBs; and
  (B) is regulated under 329 IAC 4.1.
(3) The waste is a solid waste and can be disposed of under 329 IAC 10.

~~*Note: All federal regulations cited in this section are incorporated by reference as revised July 1, 2008. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or online at http://bookstore.gpo.gov/. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.~~

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(Solid Waste Management Division; 329 IAC 11.6-2-21; filed Jan 30, 2013, 12:31 p.m.: 20130227-IR-329100253FRA; readopted filed Jun 14, 2019, 2:00 p.m.: 20190710-IR-329190249BFA)

SECTION 12. 329 IAC 13-6-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-6-5 Rebuttable presumption for used oil

Authority: IC 13-14-8; IC 13-19-3
Affected: IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand (1,000) parts per million.

(b) The transporter must make this determination by:
(1) testing the used oil; or
(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005.~~ The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by showing 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, 2005.~~ The rebuttable presumption does not apply to the following:
(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(3), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if ~~such~~ **the** oils or fluids are recycled in any other manner or disposed.
(2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if 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.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the transporter for at least three (3) years.

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(Solid Waste Management Division; 329 IAC 13-6-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)

SECTION 13. 329 IAC 13-7-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-7-4 Rebuttable presumption for used oil

Authority: IC 13-14-8; IC 13-19-3
Affected: IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. (a) To ensure that used oil managed at a processing or re-refining facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the owner or operator of a used oil processing or re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The owner or operator must make this determination by:
(1) testing the used oil; or
(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005.~~ The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by showing 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, 2005.~~ The rebuttable presumption does not apply to the following:
(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if ~~such~~ **the** oils or fluids are recycled in any other manner or disposed.
(2) 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.

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(Solid Waste Management Division; 329 IAC 13-7-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1506; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)

SECTION 14. 329 IAC 13-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-8-4 Rebuttable presumption for used oil

Authority: IC 13-14-8; IC 13-19-3
Affected: IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. (a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The used oil burner must determine if the used oil contains above or below one thousand (1,000) parts per million total halogens by:
(1) testing the used oil;
(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
(3) if the used oil has been received from a processor or refiner subject to regulation under 329 IAC 13-7, using information provided by the processor or re-refiner.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005.~~ The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by showing 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, 2005.~~ The rebuttable presumption does not apply to the following:
(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if ~~such~~ **the** oils or fluids are recycled in any other manner or disposed.
(2) 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.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the burner for at least three (3) years.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; 329 IAC 13-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1510; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA)

SECTION 15. THE FOLLOWING ARE REPEALED: 329 IAC 3.1-2-1; 329 IAC 3.1-2-2; 329 IAC 3.1-2-3; 329 IAC 3.1-2-4; 329 IAC 3.1-2-5; 329 IAC 3.1-2-6; 329 IAC 3.1-2-7; 329 IAC 3.1-2-8; 329 IAC 3.1-2-9; 329 IAC 3.1-2-10; 329 IAC 3.1-2-11; 329 IAC 3.1-2-12; 329 IAC 3.1-2-13; 329 IAC 3.1-2-14; 329 IAC 3.1-2-15; 329 IAC 3.1-2-16; 329 IAC 10-1-2.5.

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