TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #00-180

DIGEST

Amends 329 IAC 3.1-1-7, 329 IAC 3.1-6-2, 329 IAC 3.1-9-2, 329 IAC 3.1-10-2, and 329 IAC 3.1-13-2 pertaining to the hazardous waste management program to achieve consistency with federal hazardous waste management regulations by incorporating by reference changes to 40 CFR 260 through 40 CFR 270 that were issued by the U.S. Environmental Protection Agency (U.S. EPA) between May 11, 1999, through June 8, 2000. Amends 329 IAC 3.1-7 to be consistent with Public Law 143-2000, SECTION 3, effective January 1, 2001, that will repeal the provisions of IC 13-22-4 relating to the Indiana Hazardous Waste Manifest and will require hazardous waste generators to use the Uniform Hazardous Waste Manifest Form adopted by the U.S. EPA rather than the version of those forms currently provided by IDEM to generators for a fee. Amends 329 IAC 3.1-12-2 to clarify a provision regarding one time notification for wastes that exhibited a characteristic of hazardous waste and are no longer hazardous to be consistent with the federal requirement. Amends 329 IAC 3.1-14-6, 329 IAC 3.1-14-16, 329 IAC 3.1-15-4, and 329 IAC 3.1-15-6 to correct a provision in the financial assurance requirements that made Indiana's rules less stringent than the federal hazardous waste program, as required by 42 U.S.C. 6926. Amends 329 IAC 3.1-16-2 to incorporate by reference the federal universal waste requirements for mercury-containing lamps and to prohibit intentional crushing of lamps in conjunction with recycling. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8 and Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3221).

Date of First Hearing: September 19, 2000.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

Because the commissioner has made a determination and has prepared written findings for this rule under IC 13-14-9-8, this rule is not subject to the third public comment period provisions of IC 13-14-9-4.5.

FISCAL ANALYSIS PUBLISHED UNDER IC 13-14-9-5

The economic impact of this proposed rule is estimated to be less than five hundred thousand dollars ($500,000) on the regulated entities. This rule was not submitted to the Legislative Services Agency for fiscal analysis under IC 4-22-2-28.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 19, 2000, the solid waste management board (board) conducted the first public hearing/board meeting concerning development of amendments to 329 IAC 3.1. No comments were made at the first hearing.

329 IAC 3.1-1-7
329 IAC 3.1-6-2
329 IAC 3.1-7-2
329 IAC 3.1-7-3
329 IAC 3.1-7-4
329 IAC 3.1-7-5
329 IAC 3.1-7-6
329 IAC 3.1-7-7
329 IAC 3.1-7-8
329 IAC 3.1-7-9
329 IAC 3.1-7-10
329 IAC 3.1-7-11
329 IAC 3.1-7-12
329 IAC 3.1-7-13
329 IAC 3.1-9-2
329 IAC 3.1-10-2
329 IAC 3.1-12-2
329 IAC 3.1-13-2
329 IAC 3.1-14-6
329 IAC 3.1-14-16
329 IAC 3.1-15-4
329 IAC 3.1-15-6
329 IAC 3.1-16-2

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 23 IR 1637, 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, ~~1998.~~ **1999.** 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. The following publications are also incorporated by reference:

(1) 40 CFR 146 (1995).

(2) 40 CFR 60, Appendix A (1995).

~~(3) Amendments to 40 CFR 261 published in the Federal Register on July 14, 1998, at 63 FR 37781 through 63 FR 37782.~~

~~(4) Amendments to 40 CFR 261, 40 CFR 266, and 40 CFR 268 published in the Federal Register on August 6, 1998, at 63 FR 42184 through 63 FR 42188.~~

~~(5) Amendments to 40 CFR 268 published in the Federal Register on August 31, 1998, at 63 FR 46334.~~

~~(6) Amendments to 40 CFR 268 published in the Federal Register on September 4, 1998, at 63 FR 47415 through 63 FR 47418.~~

~~(7) Amendments to 40 CFR 268 published in the Federal Register on September 9, 1998, at 63 FR 48127.~~

~~(8) Amendments to 40 CFR 268 published in the Federal Register on September 24, 1998, at 63 FR 51264 through 63 FR 51267.~~

~~(9) Amendments to 40 CFR 261, 40 CFR 266, and 40 CFR 268 published in the Federal Register on October 9, 1998, at 63 FR 54356 through 63 FR 54357.~~

~~(10) Amendments to 40 CFR 264, 40 CFR 265, and 40 CFR 270 published in the Federal Register on October 22, 1998, at 63 FR 56733 through 63 FR 56735.~~

~~(11) Amendments to 40 CFR 260, 40 CFR 261, 40 CFR 264, 40 CFR 265, 40 CFR 268, and 40 CFR 270 published in the Federal Register on November 30, 1998, at 63 FR 65937 through 63 FR 65947.~~

~~(12) Amendments to 40 CFR 266 and 40 CFR 273 published in the Federal Register on December 24, 1998, at 63 FR 71229 through 63 FR 71230.~~

~~(13) Amendments to 40 CFR 262, 40 CFR 264, and 40 CFR 265 published in the Federal Register on January 21, 1999, at 64 FR 3388 through 64 FR 3391.~~

~~(14) Amendments to 40 CFR 261 published in the Federal Register on February 11, 1999, at 64 FR 6813 through 64 FR 6814.~~

(3) Amendments to 40 CFR 260, 40 CFR 261, 40 CFR 264, 40 CFR 265, 40 CFR 268, 40 CFR 270, and 40 CFR 273 published in the Federal Register on July 6, 1999, at 64 FR 36487 through 64 FR 36490.

(4) Amendments to 40 CFR 260, 40 CFR 261, 40 CFR 264, 40 CFR 265, 40 CFR 266, 40 CFR 270, and 40 CFR 271 published in the Federal Register on September 30, 1999, at 64 FR 53070 through 64 FR 53077.

(5) Amendments to 40 CFR 261, 40 CFR 262, and 40 CFR 268 published in the Federal Register on October 20, 1999, at 64 FR 56470 through 64 FR 56472.

(6) Amendments to 40 CFR 261 and 40 CFR 266 published in the Federal Register on November 19, 2000, at 64 FR 63212 through 64 FR 63213.

(7) Amendments to 40 CFR 262 published in the Federal Register on March 8, 2000, at 65 FR 12397 through 65 FR 12398.

(8) Amendments to 40 CFR 261 and 40 CFR 268 published in the Federal Register on March 17, 2000, at 65 FR 14474 through 65 FR 14475.

(9) Amendments to 40 CFR 270 published in the Federal Register on May 15, 2000 at 65 FR 30913.

(10) Amendments to 40 CFR 261 and 40 CFR 268 published in the Federal Register on June 8, 2000 at 65 FR 36366 through 65 FR 36367.

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). 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) 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) 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) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions which may be effective in Indiana which 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)*

SECTION 2. 329 IAC 3.1-6-2, AS AMENDED AT 23 IR 1638, SECTION 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; 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 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 is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:
(A) in the case of IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or
(B) 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 addition to the universal wastes listed in 40 CFR 261.9, add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).~~
~~(9)~~ **(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)".
~~(10)~~ **(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".
~~(11)~~ **(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.".
~~(12)~~ **(11)** Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).
~~(13)~~ **(12)** Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.
~~(14)~~ **(13)** Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.
~~(15)~~ **(14)** Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.
~~(16)~~ **(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.
~~(17) In 40 CFR 261.32, delete waste code K140 from the organic chemicals subgroup in the table.~~
~~(18) In 40 CFR 261.33(f), delete waste code U408 from the table.~~
~~(19) In 40 CFR 261, Appendix VII, delete waste code K140.~~
~~(20) In 40 CFR 261, Appendix VIII, delete 2,4,6-Tribromophenol (waste code U408) from the list of hazardous constituents.~~
(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)

SECTION 3. 329 IAC 3.1-7-2, AS AMENDED AT 23 IR 1098, SECTION 9, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-7-2 Exceptions and additions; generator standards
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 262

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

~~(1) In 40 CFR 262, delete Subpart B dealing with manifests and their use and the Appendix, and substitute sections 3 through 13 of this rule.~~

~~(2)~~ **(1)** Delete 40 CFR 262.12(a) and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned.".

(2) In addition to the requirements of 40 CFR 262, Subpart B and the appendix to 40 CFR 262, the generator shall enter the EPA hazardous waste number and handling code for each waste on the Uniform Hazardous Waste Manifest as follows:

(A) The EPA hazardous waste number for each waste must be entered on the manifest as follows:

(i) For characteristic hazardous waste, enter the four (4) digit EPA hazardous waste number from 40 CFR 261, Subpart C, that identifies the waste in item "I" of the manifest form.

(ii) For listed hazardous waste, enter the four (4) digit EPA hazardous waste number from 40 CFR 261, Subpart D, that identifies the waste in item "I" of the manifest form.

(iii) Where a hazardous waste contains more than one (1) listed waste, or where more than one (1) hazardous waste characteristic applies to the waste, enter each of the applicable EPA waste numbers that identify the waste. When entering multiple EPA hazardous waste numbers, enter the EPA hazardous waste number that identifies the most distinctive or hazardous property of the waste in item "I". Enter the remaining EPA hazardous waste numbers, up to four (4) for each waste, in item "J".

(iv) If a waste has more than four (4) additional EPA hazardous waste numbers associated with it, enter the words "multiple coded" or "multi-coded" instead of the additional codes for that waste in item "J".

(v) For nonhazardous or unregulated waste that may be included in the shipment, enter "NONE" in item "I".

(B) The handling code for each waste must be entered in item "K" of the manifest form as follows:

(i) Enter the three (3) character handling code from 40 CFR 264, Appendix I, Table 2 that most closely represents the method used at the facility designated in accordance with 40 CFR 262.20(b) to treat, store, dispose, or recover each hazardous waste identified on the manifest.

(ii) If multiple methods are used, the code that most closely reflects the ultimate disposition of the waste at the facility must be entered.

(iii) If clarification is necessary, enter this information in item 15 or item 32 on the continuation sheet, EPA Form 8700-22A.

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

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

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

(6) In 40 CFR 262.53 and 40 CFR 262.54, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.

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

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

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

(Solid Waste Management Board; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091)

SECTION 4. 329 IAC 3.1-9-2, PROPOSED TO BE AMENDED AT 23 IR 2842, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-9-2 Exceptions and additions; final permit standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:
(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.
~~(2) In addition to the universal wastes listed in 40 CFR 264.1(g)(11), add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).~~
~~(3)~~ **(2)** In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".
~~(4)~~ **(3)** Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.
~~(5)~~ **(4)** The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.
~~(6)~~ **(5)** In addition to the requirements at 40 CFR 264.71 dealing with use of the manifest system, the owner or operator, or the owner's or operator's agent, must send one (1) copy of each manifest received with a hazardous waste shipment to the office of land quality within five (5) working days after receiving the manifest.
~~(7)~~ **(6)** In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".
~~(8)~~ **(7)** In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".
~~(9)~~ **(8)** In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:
(A) Two (2) paper copies on the most current form prescribed by the department.
(B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department.
(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner.".
~~(10)~~ **(9)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.
~~(11)~~ **(10)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.
~~(12)~~ **(11)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".
~~(13)~~ **(12)** Delete 40 CFR 264.301(l).
~~(14)~~ **(13)** Delete 40 CFR 264, Appendix VI.
~~(15)~~ **(14)** In 40 CFR 264.316(b), delete "(49 CFR ~~Parts~~ 178 and 179)" and substitute "(49 CFR ~~Part~~ 178)".
~~(16)~~ **(15)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".
(Solid Waste Management Board; 329 IAC 3.1-9-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091)

SECTION 5. 329 IAC 3.1-10-2, PROPOSED TO BE AMENDED AT 23 IR 2842, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-10-2 Exceptions and additions; interim status standards
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 265

Sec. 2. Exceptions and additions to federal interim status standards are as follows:
(1) In 40 CFR 265.1(a) dealing with scope of the permit, delete "national" and insert "state".
(2) In 40 CFR 265.1(b), delete "section 3005 of RCRA" and insert "329 IAC 3.1-13" in both places where it occurs.
(3) Delete 40 CFR 265.1(c)(4).
~~(4) In addition to the universal wastes listed in 40 CFR 265.1(c)(14), add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).~~
~~(5)~~ **(4)** In 40 CFR 265.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".
~~(6)~~ **(5)** Reports to the state required at 40 CFR 265.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317)

233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

~~(7)~~ **(6)** The written spill report required by 40 CFR 265.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

~~(8)~~ **(7)** In addition to the requirements at 40 CFR 265.71 dealing with use of the manifest system, the owner or operator, or the owner's or operator's agent, must send one (1) copy of each manifest received with a hazardous waste shipment to the office of land quality within five (5) working days after receiving the manifest.

~~(9)~~ **(8)** In 40 CFR 265.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "form provided by the commissioner".

~~(10)~~ **(9)** In 40 CFR 265.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

~~(11)~~ **(10)** In 40 CFR 265.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the department.

(B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department.".

~~(12)~~ **(11)** In 40 CFR 265.77 regarding additional reports, insert after the first sentence in (d), "The commissioner may request other information as required by Subparts AA through CC of this part be submitted in an electronic format as prescribed by the commissioner.".

~~(13)~~ **(12)** In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date.

~~(14)~~ **(13)** Delete 40 CFR 265.112(d)(3)(ii) and substitute: "Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under IC 13-30-3, or final administrative order under IC 4-21.5 to cease receiving hazardous waste or close".

~~(15)~~ **(13)** Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision (11).

~~(16)~~ **(14)** Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-14.

~~(17)~~ **(15)** In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

~~(18)~~ **(16)** In 40 CFR 265.191(c), delete "July 14, 1986" and insert "June 20, 1988".

~~(19)~~ **(17)** In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in 329 IAC 3.1-9-3(c)(1) through 329 IAC 3.1-9-3(c)(8).

~~(20)~~ **(18)** In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

~~(21)~~ **(19)** In 40 CFR 265.301(d)(2)(i)(C), delete "RCRA Section 3005(c)" and insert "329 IAC 3.1-13".

~~(22)~~ **(20)** In 40 CFR 265.314(g)(2) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

~~(23)~~ **(21)** In 40 CFR 265.316(b), delete "(49 CFR 178 and 179)" and substitute "(49 CFR 178)".

~~(24)~~ **(21)** In 40 CFR 265.316(f), delete "fiber drums" and substitute "nonmetal containers".

~~(25)~~ **(22)** Delete 40 CFR 265.430(b) and substitute the following: The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-10-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091)

SECTION 6. 329 IAC 3.1-12-2, AS AMENDED AT 23 IR 1639, SECTION 4, 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 13-22-2; 40 CFR 268

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

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

(A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.

(B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.

(C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).

(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.
(2) For the reason described in subdivision (1), delete the following:
(A) 40 CFR 268.5.
(B) 40 CFR 268.6.
(C) 40 CFR 268.42(b).
(D) 40 CFR 268.44.
(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.
(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C, as incorporated in this rule.
~~(5) In addition to the universal wastes listed in 40 CFR 268.1(f), add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).~~
~~(6)~~ **(5)** In 40 CFR 268.2(e), delete "40 CFR 761.3" and insert "329 IAC 4".
~~(7)~~ **(6)** Delete 40 CFR 268.8.
~~(8)~~ **(7)** Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to ~~40 CFR 268.7~~ **the** requirements **of 40 CFR 268.7,** except that once the waste is no longer hazardous, ~~for each shipment of such waste to a solid waste landfill the initial generator or the treatment facility need not send a 40 CFR 268.7 notification to such facility. In such circumstances,~~ 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).
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.
~~(9)~~ **(8)** Delete 40 CFR 268, Subpart B.
~~(10)~~ **(9)** In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.
~~(11)~~ **(10)** Delete 40 CFR 268.33.
~~(12) In 40 CFR 268.40, delete waste codes K140 and U408 from the table of treatment standards for hazardous waste.~~
~~(13) In 40 CFR 268.48(a), delete 2,4,6-Tribromophenol from the table of universal treatment standards.~~
(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)

SECTION 7. 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 13-22-2; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:
(1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.
(2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for denying, issuing, modifying, revoking and reissuing, and terminating all final state permits other than "emergency permits" and "permits by rule".
(3) Delete 40 CFR 270.1(b).
~~(4) In addition to the universal wastes listed in 40 CFR 270.1(c)(2)(viii), add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).~~
~~(5)~~ **(4)** Delete 40 CFR 270.3.
~~(6)~~ **(5)** Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.
~~(7)~~**(6)** Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.
~~(8)~~ **(7)** Delete 40 CFR 270.14(b)(18).
~~(9)~~ **(8)** Delete 40 CFR 270.14(b)(20).
~~(10)~~ **(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.

~~(11)~~ **(10)** Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following: If new requirements become effective, including any interim final regulations, during the permitting process which are:

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

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

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

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

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

~~(15)~~ **(14)** 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)

SECTION 8. 329 IAC 3.1-14-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-14-6 Surety bond guaranteeing payment into a closure trust fund option

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

Affected: IC 13-22-2; IC 23-1-16; 40 CFR 265.143(b)

Sec. 6. (a) An owner or operator may satisfy the requirements of this rule by:

(1) obtaining a surety bond that conforms to the requirements of this section; and

(2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana ~~or~~ **and** be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 5 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(2) Until the standby trust fund is funded pursuant to the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule, the following are not required by sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule:

(A) Payments into the trust fund as specified in section 5 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-14-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 949; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1974)*

SECTION 9. 329 IAC 3.1-14-16 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-14-16 Surety bond guaranteeing payment into a post-closure trust fund option

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

Affected: IC 13-22-2; 40 CFR 265.145(b)

Sec. 16. (a) An owner or operator may satisfy the requirements of section 14 of this rule by obtaining a surety bond that conforms to the requirements of this section and submitting the bond to the commissioner. The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana ~~or~~ **and** be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 15 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(2) Until the standby trust fund is funded pursuant to the requirements of sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule, the following are not required by sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule:

(A) Payments into the trust fund as specified in section 15 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current post-closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform

as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-14-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 956; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1981)*

SECTION 10. 329 IAC 3.1-15-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-15-4 Financial assurance for closure
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.143

Sec. 4. (a) An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (b) through (g).

(b) The requirements for a closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement. (See section 10(a) of this rule.) Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial final (state) permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, recovery, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where: CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in-period

(B) If an owner or operator establishes a trust fund as specified in this subsection, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where: CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in-period

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section or in 329 IAC 3.1-14, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-5 as applicable.

(6) After the pay-in-period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate; or

(B) obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for partial or final closure activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies, in writing, if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(11) The commissioner shall agree to termination of the trust when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must,

at a minimum, be:

(A) authorized to do business in Indiana; ~~or be~~ **and**

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; ~~or be~~ **and**

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond, the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue a letter-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.

(3) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date, and provide the following information:

(A) The EPA identification number, name, and address of the facility.

(B) The amount of funds assured for closure of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the commissioner may draw on the letter-of-credit.

(9) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution of the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and to obtain written approval of such assurance from the commissioner.

(10) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy also must guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the commissioner

shall instruct the insurer to make reimbursements in such amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) the commissioner deems the facility abandoned;

(B) the permit is terminated or revoked or a new permit is denied;

(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or

(E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(10) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Two (2) of the following three (3) ratios:

(AA) A ratio of total liabilities to net worth less than two (2.0).

(BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(B) The owner or operator shall have the following:

(i) A current rating for the most recent bond issuance of:

(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or

(BB) Aaa, Aa, A, or Baa as issued by Moody's.

(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars ($10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current closure and post-closure cost estimates.

(2) As used in subdivision (1), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer. (See section 10(f) of this rule.)

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

(8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subdivision (3)(B).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall perform final closure in accordance with the closure plan and other permit requirements or establish a trust fund as specified in subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.

(C) If the owner or operator fails to:

(i) provide alternate financial assurance as specified in this section; and

(ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that closure has not been in accordance with the approved closure plan. *(Solid Waste Management Board; 329 IAC 3.1-15-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 983; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2018; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109)*

SECTION 11. 329 IAC 3.1-15-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-15-6 Financial assurance for post-closure care
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.145

Sec. 6. (a) The owner or operator of a hazardous waste management unit subject to the requirements of section 5 of this rule shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty (60) days prior to the initial receipt of hazardous waste or the effective date of this rule, whichever is later. The owner or operator shall choose from the options in this section.

(b) The requirements for a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least

sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement. (See 329 IAC 3.1-14-26.) Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the first final (state) permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE = the current post-closure cost estimate

CV = the current value of the trust fund

Y = the number of years remaining in the pay-in-period

(B) If an owner or operator establishes a trust fund as specified in this section, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

Where:

CE = the current post-closure cost estimate

CV = the current value of the trust fund

Y = the number of years remaining in the pay-in-period

(4) The owner or operator may accelerate payments into the trust fund, or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section or 329 IAC 3.1-14-15, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-15 as applicable.

(6) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or

(B) obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(10) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.
(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.
(12) The commissioner shall agree to termination of the trust when:
(A) the owner or operator substitutes alternate financial assurance as specified in this section; or
(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a post-closure trust fund are as follows:
(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:
(A) authorized to do business in Indiana; ~~or be~~ **and**
(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.
(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:
(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
(B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
(i) Payments into the trust fund as specified in subsection (b).
(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current post-closure cost estimates.
(iii) Annual valuations as required by the trust agreement.
(iv) Notices of nonpayment as required by the trust agreement.
(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:
(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.
(C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.
(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).
(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:
(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
(B) obtain other financial assurance as specified in this section to cover the increase.
Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.
(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the

commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of post-closure care are as follows:
(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:
(A) authorized to do business in Indiana; ~~or be~~ **and**
(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
(2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.
(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:
(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
(i) Payments into the trust fund as specified in subsection (b).
(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current post-closure cost estimates.
(iii) Annual valuations as required by the trust agreement.
(iv) Notices of nonpayment as required by the trust agreement.
(4) The bond must guarantee that the owner or operator shall:
(A) perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or
(B) provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.
(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond, the surety shall perform post-closure care in accordance with the post-closure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.
(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.
(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
(B) obtain other financial assurance as specified in this section.
Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
(8) During the period of post-closure care, the commissioner may approve a decrease in the penal sum if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.
(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.
(10) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:
(A) the owner or operator substitutes alternate financial assurance as specified in this section; or
(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).
(11) The surety shall not be liable for deficiencies in the performance of post-closure care by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a post-closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. This issuing institution must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
(2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.
(3) The owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:
(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.
(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
(i) Payments into the trust fund as specified in subsection (b).
(ii) Updating of Schedule A of the trust agreement (see section 10(a) of this rule) to reflect current post-closure cost estimates.
(iii) Annual valuations as required by the trust agreement.
(iv) Notices of nonpayment as required by the trust agreement.
(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:
(A) The EPA identification number, name, and address of the facility.
(B) The amount of funds assured for post-closure care of the facility by the letter-of-credit.
(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.
(6) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).
(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
(A) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
(B) obtain other financial assurance as specified in this section to cover the increase.
Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
(8) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.
(9) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.
(10) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the commissioner.
(11) The commissioner shall return the letter-of-credit to the issuing institution for termination when:
(A) the owner or operator substitutes alternate financial assurance as specified in this section; or
(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for post-closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.
(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.
(3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
(4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy also must guarantee that once post-closure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.
(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure activities, the commissioner shall instruct the insurer to make reimbursement in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.
(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article, warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.
(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:
(A) the commissioner deems the facility abandoned;
(B) the permit is terminated or revoked or a new permit is denied;
(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;
(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or
(E) the premium due is paid.
(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
(A) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
(B) obtain other financial assurance as specified in this section to cover the increase.
Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.
(11) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or
(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for post-closure care are as follows:
(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:
(A) The owner or operator shall have the following:
(i) Two (2) of the following three (3) ratios:
(AA) A ratio of total liabilities to net worth less than two (2.0).
(BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
(CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.
(iii) Tangible net worth of at least ten million dollars ($10,000,000).
(iv) Assets located in the United States amounting to at least:
(AA) ninety percent (90%) of the total assets; or
(BB) six (6) times the sum of the current closure and post-closure cost estimates.
(B) The owner or operator shall have the following:
(i) A current rating for the most recent bond issuance of:
(AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
(BB) Aaa, Aa, A, or Baa as issued by Moody's.
(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.
(iii) Tangible net worth of at least ten million dollars ($10,000,000).
(iv) Assets located in the United States amounting to at least:
(AA) ninety percent (90%) of the total assets; or
(BB) six (6) times the sum of the current closure and post-closure cost estimates.
(2) As used in subdivision (1), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer. (See section 10(f) of this rule.)
(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:
(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.
(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
(i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
(ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.
(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal.
(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).
(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.
(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this

section within thirty (30) days after notification of such a finding.

(8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subdivision (3)(B).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other permit requirements or establish a trust fund as specified in subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(C) If the owner or operator fails to:

(i) provide alternate financial assurance as specified in this section; and

(ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certification from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the commissioner shall notify the owner or operator that the owner or operator is no longer required to maintain financial assurance for post-closure care of that unit, unless the commissioner has reason to believe that post-closure care has not been in

accordance with the approved post-closure plan. The commissioner shall provide the owner or operator with a detailed written statement of any such reason that post-closure care has not been in accordance with the approved post-closure plan. *(Solid Waste Management Board; 329 IAC 3.1-15-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 991; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110)*

SECTION 12. 329 IAC 3.1-16-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-16-2 Exceptions and additions; petitions to add a universal waste
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-8-5; IC 13-22-2; 40 CFR 273

Sec. 2. **(a)** Exceptions and additions to 40 CFR 273 include the following:
~~(1) In addition to the wastes listed in 40 CFR 273.1(a), add the following: Mercury-containing lamps as described in subdivision (3).~~
~~(2) In addition to the applicability sections in 40 CFR 273.2 through 40 CFR 273.4, add the following: This rule applies to mercury-containing lamps as follows:~~
~~(A) The requirements of 40 CFR 273 apply to persons managing mercury-containing lamps covered under this rule, as described in subdivision (4), except those listed in clause (B).~~
~~(B) The requirements of this subdivision do not apply to persons managing the following mercury-containing lamps:~~
~~(i) Mercury-containing lamps that are not yet wastes under 40 CFR 261.~~
~~(ii) Mercury-containing lamps that are not hazardous waste. A mercury-containing lamp is a hazardous waste if it exhibits one (1) or more of the characteristics identified in 40 CFR 261, Subpart C.~~
~~(C) Mercury-containing lamps become waste as follows:~~
~~(i) A used mercury-containing lamp becomes a waste on the date the handler permanently removes it from its fixture.~~
~~(ii) An unused mercury-containing lamp becomes a waste on the date the handler decides to discard it.~~
~~(3) In addition to the definitions in 40 CFR 273.6, the following definitions apply:~~
~~(A) "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to:~~
~~(i) incandescent lamps;~~
~~(ii) fluorescent lamps;~~
~~(iii) high pressure sodium lamps;~~
~~(iv) high intensity discharge lamps;~~
~~(v) mercury vapor lamps;~~
~~(vi) metal halide lamps; and~~
~~(vii) neon lamps.~~
~~(B) "Mercury-containing lamp" means an electric lamp into which mercury is purposely introduced by the manufacturer for the operation of the lamp.~~
~~(4)~~ **(1)** In addition to the waste management requirements in ~~40 CFR 273.13,~~ **40 CFR 273.13(d),** add the following: A small quantity handler of universal waste ~~must manage universal waste mercury-containing lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment as follows:~~
~~(A) A small quantity handler of waste lamps must at all times:~~
~~(i) contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and~~
~~(ii) contain broken lamps in packaging that will minimize releases of lamp fragments and residues.~~
~~(B) A small quantity handler of hazardous waste lamps must at all times manage waste lamps in a way that minimizes lamp breakage.~~
~~(C) A small quantity handler of hazardous waste lamps must immediately contain all releases of residues from hazardous waste lamps.~~
~~(D) A small quantity handler of hazardous waste lamps must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR 261, Subpart C:~~
~~(i) Any materials resulting from a release.~~
~~(ii) Clean-up residues from spills or breakage.~~
~~(iii) Other solid waste generated as a result of handling waste lamps.~~
~~(E) If the material, residue, or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR 260 through 40 CFR 270.~~

(F) If the material, residue, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with 329 IAC 10 through 329 IAC 12.

(G) Hazardous waste lamps may be intentionally broken or crushed to reduce storage volume. Such breaking, crushing, handling, or storage must minimize the release of mercury to the workplace or environment. The permissible exposure limits (PEL) for mercury and other contaminants are found at 29 CFR 1910.1000.

shall not intentionally break or crush universal waste lamps.

(5) **(2)** In addition to the labeling and marking requirements in 40 CFR 273.14, **40 CFR 273.14(a),** add the following: Universal waste mercury-containing lamps, or a container in which the lamps are contained, must be labeled or marked clearly with any one (1) of the following phrases:

(A) Universal Waste–Mercury-Containing Lamps.

(B) Waste Mercury-Containing Lamps.

(C) Used Mercury-Containing Lamps.

Other words that accurately identify the universal waste batteries may be used.

(3) In addition to the labeling and marking requirements in 40 CFR 273.14(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(4) In addition to the labeling and marking requirements in 40 CFR 273.14(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(6) **(5)** In addition to the waste management requirements in 40 CFR 273.33, **40 CFR 273.33(d),** add the following: A large quantity handler of universal waste must manage universal waste mercury-containing lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment as follows:

(A) A large quantity handler of waste lamps must at all times:

(i) contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and

(ii) contain broken lamps in packaging that will minimize releases of lamp fragments and residues.

(B) A large quantity handler of hazardous waste lamps must at all times manage waste lamps in a way that minimizes lamp breakage.

(C) A large quantity handler of hazardous waste lamps must immediately contain all releases of residues from hazardous waste lamps.

(D) A large quantity handler of hazardous waste lamps must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR 261, Subpart C:

(i) Any materials resulting from a release.

(ii) Clean-up residues from spills or breakage.

(iii) Other solid waste generated as a result of handling waste lamps.

(E) If the material, residue, or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR 260 through 40 CFR 270.

(F) If the material, residue, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with 329 IAC 10 through 329 IAC 12.

(G) Hazardous waste lamps may be intentionally broken or crushed to reduce storage volume. Such breaking, crushing, handling, or storage must minimize the release of mercury to the workplace or environment. The permissible exposure limits (PEL) for mercury and other contaminants are found at 29 CFR 1910.1000.

shall not intentionally break or crush universal waste lamps.

(7) **(6)** In addition to the labeling and marking requirements in 40 CFR 273.34, **40 CFR 273.34(a),** add the following: Universal waste mercury-containing lamps, or a container in which the lamps are contained, must be labeled or marked clearly with any one (1) of the following phrases:

(A) Universal Waste–Mercury-Containing Lamps.

(B) Waste Mercury-Containing Lamps.

(C) Used Mercury-Containing Lamps.

Other words that accurately identify the universal waste batteries may be used.

(7) In addition to the labeling and marking requirements in 40 CFR 273.34(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(8) In addition to the labeling and marking requirements in 40 CFR 273.34(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(8) **(b)** In addition to the petition procedures in 40 CFR 273, Subpart G, add the following: Any person seeking to add a hazardous waste or a category of hazardous waste to this article must do one (1) of the following:

(A) **(1)** Petition for a regulatory amendment under IC 13-14-8-5. Citizen rulemaking petition procedures were published in the

Indiana Register on June 1, 1995, at 18 IR 2355. Criteria for adding a hazardous waste or a category of hazardous waste to this rule are found at 40 CFR 273.80 and 40 CFR 273.81.

~~(B)~~ **(2)** Present evidence to the commissioner that demonstrates that the waste meets the criteria of 40 CFR 273.80 and 40 CFR 273.81 for inclusion under 40 CFR Part 273. If the evidence presented demonstrates to the satisfaction of the commissioner that regulation of the waste under the universal waste regulations of 40 CFR Part 273 and this section is appropriate for that waste or category of waste and meets the guidelines of 40 CFR 273.80(b), the commissioner will initiate a rulemaking action to amend this article appropriately.

(Solid Waste Management Board; 329 IAC 3.1-16-2; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3368; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110)

SECTION 13. THE FOLLOWING ARE REPEALED: 329 IAC 3.1-7-3; 329 IAC 3.1-7-4; 329 IAC 3.1-7-5; 329 IAC 3.1-7-6; 329 IAC 3.1-7-7; 329 IAC 3.1-7-8; 329 IAC 3.1-7-9; 329 IAC 3.1-7-10; 329 IAC 3.1-7-11; 329 IAC 3.1-7-12; 329 IAC 3.1-7-13.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on January 16, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 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.

Persons attending this hearing should ask at the Conference Center Information Desk if any changes to the conference room where this hearing will be held may have been made since publication of this notice.

The purpose of this hearing is to receive comments from the public prior to final 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 Mojonnier, 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: Sue Zapf, 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 at the Indiana Department of Environmental Management Central File Room, Indiana Government Center-North, 100 North Senate Avenue, Room 1201 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary Beth Tuohy
Assistant Commissioner
Office of Solid and Hazardous Waste Management