

Document: Proposed Rule

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**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

Proposed Rule
LSA Document #01-207

DIGEST

Amends and considers for readoption pursuant to comments received under IC 13-14-9.5, 329 IAC 11-9, 329 IAC 11-11, and 329 IAC 11-14. 329 IAC 11-9 addresses solid waste processing facilities permit requirements; 329 IAC 11-11 addresses solid waste processing permit issuance; and 329 IAC 11-14 addresses quarterly reporting of solid waste processing facilities. The amendments correct language and references. This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under a provision of IC 13 and was in effect on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, with some exceptions listed in IC 13-14-9.5-1 and IC 13-14-9.5-1.1, expire on January 1 of the seventh year after the year in which each rule takes effect. The First Notice of Comment Period and Continuation of First Notice of Comment Period opened all rules required to be opened in Title 329 for readoption, regardless of their initial effective date. Other comments received are being included and considered within other currently existing rulemakings. Effective January 1, 2002.

HISTORY

First Notice of Comment Period: December 1, 1995, Indiana Register (19 IR 512).
Continuation of First Notice of Comment Period: December 1, 1996, Indiana Register (20 IR 867).
Second Notice of Comment Period and Notice of First Hearing: July 1, 1999, Indiana Register (22 IR 3246).
Change in Notice of Public Hearing: October 1, 1999, Indiana Register (23 IR 38).
Date of First Public Hearing: May 16, 2000; continued to June 20, 2000.
Notice of First Hearing: August 1, 2000, Indiana Register (23 IR 2788).
Date of First Public Hearing: November 21, 2000; continued to January 16, 2001, but postponed.
Second Notice of Comment Period and Notice of First Hearing: April 1, 2001, Indiana Register (24 IR 2245).
Date of First Hearing: May 15, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantially different from the draft rule published on April 1, 2001, at 24 IR 2245, the Indiana Department of Environmental Management (IDEM) is not requesting additional comments on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from April 1, 2001, through May 1, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Elizabeth L. Dusold, Eli Lilly and Company (ELC)

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

Comment: Lilly believes that the Quarterly Tonnage Reports required under 329 IAC 11-14 should not be required for a facility which is owned by the generator of the waste and is limited to use by that person. Indiana statute provides a similar exemption for several different types of reporting related to solid waste facilities, see IC 13-20-5-1, and such an exemption should be provided to relieve owners of captive solid waste processing facilities, such as Lilly, from the burden of reporting on intracompany transfers of solid wastes. In response to Lilly's comments on April 1, 2001, IDEM has stated that on-site processing facilities or transfer station are excluded from the current rules and are not required to submit the quarterly tonnage reports. Lilly respectfully suggests that this issue needs further clarification, and suggests 329 IAC 11-14 be amended as follows:

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste processing facility that is open to accept solid waste for processing unless:

- (1) the owner, operator, or permitted of the solid waste processing facility has:
 - (a) ceased accepting solid waste for a period of at least one (1) calendar quarter; and
 - (b) the owner, operator or permitted of the solid waste processing facility has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable; or
- (2) the solid waste processing facility is limited to the use of the individual, corporation, partnership or business association, or a subsidiary of that entity, generating the solid waste.

This proposed change will make it clear that such reports are not required for generator-owned incineration facilities, and will save Lilly alone a significant administrative and paperwork burden. Based on IDEM's comments, the reports currently submitted by Lilly are not useful to the agency. (ELC)

Response: IDEM agrees with Lilly in that it is not clear that small permit-by-rule incinerators (329 IAC 11-19-2(a)) are not required to submit quarterly reports under 329 IAC 11-14. It should be clear that incinerators that are permitted by rule under 329 IAC 11-9-2(a) are not required to submit quarterly reports under 329 IAC 11-14. The following change was made under 329 IAC 11-14(c):

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste processing facility that is open to accept solid waste for processing unless **one of the following applies:**

- (1) The owner, operator, or permitted of the solid waste processing facility has:
 - (a) ceased accepting solid waste for a period of at least one (1) calendar quarter; and**
 - (b) the owner, operator or permitted of the solid waste processing facility has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable.**
- (2) The solid waste processing facility is not required to obtain a permit under this article.**
- (3) The solid waste processing facility is only required to obtain a permit by rule under 329 IAC 11-19-2(a).**

However, the blanket exemption that Lilly suggested in their comment is considered by IDEM to be too broad. It is quite clear in the rule at 329 IAC 11-19-2(b)(3) that incinerators with a design capacity greater than or equal to 10 tons per day but less than 30 tons per day must submit quarterly reports. 329 IAC 11-19-2(b)(3) states: Solid waste incinerators must comply with the requirement of 329 IAC 11-7 and 329 IAC 11-13 through 329 IAC 11-15. This is clear that quarterly reports, required to be submitted under 329 IAC 11-14, must be submitted. The requirement for submitting a quarterly report of the type and amount of waste submitted is for the department to understand how the total solid waste is managed in the state. The department needs to know not just where the waste is going but the management of that waste. If the incinerator was no longer functioning, that waste would probably need to go to a landfill. Adequate disposal capacity must always be considered. Reporting from larger incinerators is very important and necessary to the department.

Comment: To the extent that the Second Notice of Comment referred to above requested comments on the solid waste processing rule which is broader than the specific regulatory language published in the Indiana Register notice, Lilly hereby incorporated in full its letter to Mr. Bruce Palin dated February 9, 2001 regarding solid waste processing facilities. Lilly strongly opposes the broad scope of the processing rule changes which have been suggested by IDEM at various recent public meetings. (ELC)

Response: The following comments from the letter submitted to Mr. Bruce Palin dated February 9, 2001 regarding solid waste processing facilities are incorporated regarding the sections that will be addressed in this rulemaking.

Comment: 329 IAC 11-9-2 Lilly strongly supports this provision, which could be appropriate for on-site facilities which require permits.

(k) Alternatives to operational requirements may be approved by the commissioner based on the following:

- (1) Site specific conditions.**
- (2) Activities occurring on-site.**
- (3) When the alternatives are as protective of human health and the environment as the operational requirements. (ELC)**

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: 329 IAC 11-9-2 These provisions are not all "location restrictions" so this provision is confusing. In addition, it is not advisable or necessary to reference other rules which are otherwise applicable.

(l) The land owner or the owner or operator of a facility shall comply with the following location restrictions:

(1) The owner or operator of a facility shall, as applicable, obtain and comply with all permits and certifications required under the following:

- (A) Section 401 of the Clean Water Act, as amended December 21, 1995 (33 U.S.C. 1341).**
- (B) Section 404 of the Clean Water Act, as amended December 21, 1995 (33 U.S.C. 1344).**
- (C) 33 CFR 320 through 33 CFR 330 revised as of July 1, 1999.**
- (D) Water pollution control board rules at 327 IAC 2.**

(2) The owner or operator of a facility shall not locate a facility in violation of the endangered species siting restrictions at IC 14-22-34. (ELC)

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: **329 IAC 11-9-5** Lilly strongly supports this provision, and this provision makes the rule consistent with the statutory authority.

Sec. 5. (a) This section applies to all permits for new solid waste facilities or major modifications of permits issued after March 20, 1990, except those facilities exempt under ~~IC 13-7-10-1.5(c)~~ **this section does not apply to a solid waste facility or a major modification of a permit that processes solid waste:**

(1) that is generated by that person;

(2) processed at that site or by a wholly owned subsidiary owned by that person; and

(3) limited to use by only that person. (ELC)

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: 329 IAC 11-14-1 An exemption for facilities which process only solid waste from the generating facility or an affiliated generating facility from this report should be included.

Sec. 1. (a) A quarterly tonnage report of solid waste received at the ~~solid waste processing permitted~~ facility must be submitted to the commissioner by the owner, operator, or permittee of that **permitted** facility. (ELC)

Response: A change to the present rule language in this section is being made to clarify that an incinerator that is permitted by rule under 329 IAC 11-19-2(a) and any facility that is not permitted under this article is exempt from submitting a quarterly report under 329 IAC 11-14.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 15, 2001, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 11. Comments were made by the following parties:

Ron Pitzer, Eli Lilly and Company (ELC)

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

Comment: I'm here to request the board to adopt an amendment to the proposed Solid Waste Processing Facility Rule to eliminate an unnecessary paperwork requirement for generator-owned facilities. The legislature required that each Indiana agency review its rules and give interested parties an opportunity to comment on rules that may be outdated or may not be needed any longer. In March of 2000, Lilly submitted comments requesting that 329 IAC 11-14, quarterly tonnage reports for solid waste processing facilities be examined under the Sunset Provision. As stated in those comments, Lilly believes that these reports should not be required for a facility which is owned by the generator of the waste and is limited to use by that person. Indiana statute provides a similar exemption for several different types of reporting relating to solid waste facilities, and such an exemption should be provided to relieve owners of captive solid waste processing facilities, such as the ones owned by Lilly, from the burden of reporting on intracompany transfer of solid waste. In response to Lilly comments which appeared in the April 1, 2001, Indiana Register, IDEM has stated that on site processing facilities or transfer stations are excluded from the current rules and are not required to submit the quarterly tonnage reports. IDEM sought to clarify the rule by amending the current language to require only permitted processing facilities to continue to submit the report. Lilly appreciates this clarification because it would be clear that three of our incineration facilities would no longer be subject to the quarterly tonnage report; however, IDEM would like to continue to require reports for permitted facilities. Because Lilly operates an incineration facility which has a capacity greater than 10 tons per day, we would be required to continue to submit these quarterly reports. Lilly operates a hazardous waste incinerator at our Clinton, Indiana, facility which also has a permit as a solid waste incinerator. We have looked and we've been in discussion with IDEM about the possibility that this facility would be exempt from the requirements of submitting this quarterly report because it's a hazardous waste permitted facility; however, we are under consideration right now to decide whether we want to continue that hazardous waste permit for this facility. So if we no longer have that hazardous waste permit, we'd still be required to submit the report under the Solid Waste Processing Rule. So what we are suggesting is that the quarterly tonnage report should not be required for intracompany transfers. The information provided by the quarterly tonnage report does not seem to be needed for facilities that accept only intracompany waste, regardless of the size of the unit. The reporting requirement was originally intended to track waste shipments between counties in Indiana and receipts from out-of-state generators. There's no need to track intracompany transfers of waste that we can tell. Lilly submitted proposed language with its recent comments to address this issue. We urge the board to incorporate that language into the preliminarily adopted rule. This proposed change will make it clear that such reports are not required for generator-owned incineration facilities and will save Lilly an unnecessary administrative and paperwork burden. (ELC)

Response: Staff will recommend that the rule be revised at final adoption to provide flexibility in the frequency of reporting for on-site processing facilities through the facility permit.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

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

329 IAC 11-9-1	329 IAC 11-11-2
329 IAC 11-9-2	329 IAC 11-11-3
329 IAC 11-9-3	329 IAC 11-11-4
329 IAC 11-9-4	329 IAC 11-11-5
329 IAC 11-9-5	329 IAC 11-11-6
329 IAC 11-11-1	329 IAC 11-14-1

SECTION 1. 329 IAC 11-9-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-9-1 Permit requirement

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-15-7-1; IC 13-30-2; IC 13-30-6; IC 36-9-30-35

Sec. 1. (a) Unless excluded in 329 IAC 11-3, any person who **constructs or** operates a solid waste processing facility **as defined under 329 IAC 11-2-43** shall have a solid waste **processing** facility permit under this article.

(b) The owner of the facility is responsible for applying for and obtaining a permit. The owner of the land upon which the facility is located also shall sign the application form acknowledging the landowner's responsibility in accordance with 329 IAC 11-11-4.

(c) In the event that, after the permit application is submitted but prior to the issuance of the permit, there is any change that renders the information in the application incorrect, the applicant shall notify the commissioner of the change within fifteen (15) days and submit corrected information within a reasonable period of time.

(d) It is grounds to deny a permit, including a renewal permit, to any applicant if such applicant has been convicted under ~~IC 13-7-13-3~~ **IC 13-30-6** or IC 36-9-30-35, or if such applicant's previous permit to operate under this article or the previous articles, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, has been revoked by the commissioner under ~~IC 13-7-10-5~~ **IC 13-15-7-1**. (*Solid Waste Management Board; 329 IAC 11-9-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047*)

SECTION 2. 329 IAC 11-9-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-9-2 New permit application and major modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 4-21.5-3-4; IC 4-21.5-3-5; IC 13-20-21; IC 13-30-2; IC 36-7-4; IC 36-9-30

Sec. 2. (a) A complete application for a solid waste **processing** facility permit must consist of the following information submitted to the commissioner in a format specified by the department on forms provided by the department:

- (1) The name and address of the applicant or applicants.
- (2) The name and address of the property owner or owners.
- (3) The name, address, and location of the facility.
- (4) The legal description as defined in 329 IAC 11-2-20 for the following:
 - (A) The area for which ownership will be established as required in subdivision (10).
 - (B) The area upon which the facility is located.
 - (C) Sufficient documentation must be provided to verify that the facility is located on property owned or leased by the permittee. Documentation must include a map of the legal description for these areas certified by a registered land surveyor.
- (5) Facility information, including the following:
 - (A) A description of the type of operation.
 - (B) The planned life of the facility in years.
 - (C) The expected volume of waste to be received in cubic yards per day and tons per day.
 - (D) The type of waste to be received.
- (6) Signatures and certification statements in compliance with section 3 of this rule.
- (7) Detailed plans and design specifications as required by this section, 329 IAC 11-12, 329 IAC 11-17, and 329 IAC 11-18.

(8) Closure plan under 329 IAC 11-16.

(9) Closure financial responsibility under 329 IAC 11-16. A description of the financial instrument that will be used to achieve compliance with financial responsibility provisions of 329 IAC 10-39. These documents need not be executed and delivered to the commissioner until after the review of the technical application and until after the applicant receives notice of such requirement from the commissioner in accordance with 329 IAC 11-11-1(c)(1).

(10) Documents necessary to establish ownership or other tenancy of, including an option to purchase, the real estate upon which the facility to be permitted is located, including a certified copy of the deed to the subject real estate showing ownership in the person identified as the owner in the application, or the deed and evidence satisfactory to the commissioner that ownership will be transferred to the owner prior to operation of the facility.

(11) In order to assist the commissioner in identifying persons entitled to notice in accordance with ~~IC 4-21.5-3-5(f)~~ **IC 4-21.5-3-4 and IC 4-21.5-3-5**, the name and address of all owners or last taxpayers of record of property located within one-half (½) mile of the site boundaries of a proposed solid waste processing facility.

(12) Certification verification from the zoning authority, or the county commissioners if there is no zoning authority, that proper zoning approvals have been obtained, and the following documents:

(A) A copy of the zoning requirements, if any, for solid waste facilities in the area where the facility is to be located.

(B) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site if a solid waste facility is permitted by the zoning ordinance in the area where the facility is to be located.

(C) A copy of the amendment or amendments to the zone maps incorporated by reference into the zoning ordinance under IC 36-7-4-602(c) if a change in the zone maps is required for the area where the facility is to be located.

(D) A copy of the amendment or amendments to the zoning ordinance adopted under IC 36-7-4-602 if such amendment is required for the area where the facility is to be located.

(E) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-918.1 through IC 36-7-4-921 if such approval is required for the area where the facility is to be located.

(F) The status of any appeals of any zoning determination as described in clauses (B) through (E) and, if none pending, the date by which such appeal must be initiated.

(b) The completed application must be submitted to the commissioner in triplicate, by registered or certified mail or in person. For all items larger than eleven (11) inches by seventeen (17) inches, one (1) of the three (3) required copies must be submitted on reproducible mylar plastic.

(c) Confidentiality of information submitted in the permit application may be requested in accordance with 329 IAC 6.1.

(d) All corporations must submit a certificate of existence signed by the secretary of state.

(e) Fees must be submitted with the application in accordance with IC 13-20-21.

(f) An application for a solid waste processing facility permit must be accompanied by the plans or documents specified in this rule. Design drawings and specifications must be certified by a registered professional engineer. Design drawings must be properly titled.

(g) The following general documentation is required:

(1) A United States Geological Survey (USGS) topographic quadrangle map or maps, seven and one-half (7½) minute, or equivalent, to include all areas within two (2) miles of the proposed facility with property boundaries and the proposed processing facility clearly delineated.

(2) Documentation of the base flood elevation within one-fourth (¼) mile of the proposed facility. The following documentation will be accepted:

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

(B) A national flood insurance program map.

(h) Applications must include a plot plan or plans of the facility, including the following:

(1) Access control measures such as fences, gates, or natural barriers.

(2) A method of screening.

(3) The general layout of the equipment.

(4) The traffic pattern.

(5) Road access.

(6) Surface water drainage.

Roads and buildings, on and within one-half (½) mile of the facility, must be shown. The plot plans and drawings required by this section must be drawn to scale. A bar scale must be shown on the plans to indicate the scale if size changes occur.

(i) Applications must include drawings of all buildings and all structures used for the storage, processing, loading, and unloading of solid waste. Drawings must include the type of construction, construction materials, layout, and dimensions for the storage, processing, loading, and unloading areas. Drawings must also include sanitary facilities, plumbing, sewer connections, and utilities. All liquid waste streams generated by the facility must be shown on these drawings.

(j) Applications must include a narrative describing the proposed operation, including the following:

(1) The anticipated type, quantity, and source of solid waste to be processed at the facility, including population and the area to be served. Include any analyses already completed on the waste and describe the sampling and analysis methods and equipment used. Describe any proposed sampling of waste streams, including analytical methods to be used.

(2) A detailed description of all processes used in the handling, sorting, processing, and transportation of the waste, including a waste flow diagram for all waste streams and residues. Flow rates coinciding with the waste flow diagram must be specified.

(3) A description of the proposed testing, treatment, and **disposal disposition** of all waste resulting from the facility. Proposed testing must be adequate to provide for proper treatment and disposal of wastes.

(4) Specifications for the base of all areas where wastes will be stored or handled.

(5) Names and locations of solid waste land disposal facilities anticipated to receive waste and residue from the facility.

(6) A contingency plan outlining the method or methods of waste disposal to be implemented if the facility is unable to operate or process solid waste in accordance with the approved operating plan for more than twenty-four (24) continuous hours. Include design capacity of waste storage areas and normal percent of capacity used during routine operations. Specify the maximum inventory of wastes in storage or treatment that will occur at any time during the life of the facility.

(7) Procedures for controlling dust, noise, odors, fire, explosions, vectors, litter, and handling of bulky waste or other materials unsuitable for the proposed process.

(8) Daily cleanup procedures for solid waste storage, processing, loading, and unloading areas.

(9) Sanitary toilet facilities for employees.

(10) Proposed operating hours for the facility.

(Solid Waste Management Board; 329 IAC 11-9-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Nov 4, 1999, 10:19 a.m.: 23 IR 562)

SECTION 3. 329 IAC 11-9-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 11-9-3 Signatories to permit application and reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) All permit applications must be signed as follows:

(1) For a corporation, by a responsible corporate officer.

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(3) For a municipality or state, by the executive of the unit.

(4) For a federal or other public agency, by either a principal executive officer or ranking elected official or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency that covers the facility to be permitted.

(b) All reports required by permits and other information requested by or on behalf of the commissioner must be signed by the permittee, or by a duly authorized representative of that person. A person is presumed to be an authorized representative if the conditions in any of the following are met:

(1) The information is submitted on behalf of a person described in subsection (a).

(2) The information is submitted in response to a requirement of the permit or in response to a request for information directed to a person described in subsection (a).

(3) Written authorization is submitted to the commissioner, by an individual identified in subsection (a) that identifies a specific individual or position as authorized to submit information.

(c) If an authorization under subsection (b)(3) is no longer accurate, a new authorization satisfying the requirements of subsection

(b)(3) must be submitted to the commissioner prior to or together with any reports of information to be signed by the authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make the certification, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I further certify that I am authorized to submit this information." (*Solid Waste Management Board; 329 IAC 11-9-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1938*)

SECTION 4. 329 IAC 11-9-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-9-4 Renewal permit application and minor modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 4-21.5-3-4; IC 4-21.5-3-5; IC 13-15-3-1; IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 4. (a) Renewal applications must be submitted at least one hundred twenty (120) days prior to the expiration date of the permit.

(b) A complete application for a solid waste **processing** facility permit renewal must consist of the following information, submitted on forms provided by the commissioner:

- (1) The name and address of the applicant.
- (2) The name and address of the property owner or owners.
- (3) The name, address, and location of the facility.
- (4) The operation permit number of the facility.
- (5) The legal description of the facility location as defined in 329 IAC 11-2-20.
- (6) Facility information, including the following:
 - (A) A description of the type of operation.
 - (B) The volume of waste received at the facility in cubic yards per day or tons per day.
 - (C) The type of waste received at the site.
- (7) Signatures and certification statements in compliance with section 3 of this rule.
- (8) In order to assist the commissioner in identifying persons entitled to notice:**
 - (A) in accordance with IC 4-21.5-3-4 and IC 4-21.5-3-5, the name and address of all owners or last taxpayers of record of property located adjacent to the facility boundary of the solid waste processing facility; and**
 - (B) in accordance with IC 13-15-3-1(a), the county executive of a county that is affected by the permit application, the executive of a city that is affected by the permit application, and the executive of a town council of a town that is affected by the permit application.**

(c) Fees must be submitted with the application in accordance with ~~IC 13-7-16.1~~ **IC 13-20-21**. (*Solid Waste Management Board; 329 IAC 11-9-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1939*)

SECTION 5. 329 IAC 11-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-9-5 Demonstration and determination of need

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

Affected: IC 13-20-1-1; IC 13-21-5; IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. (a) This section applies to all permits for new solid waste facilities or major modifications of permits issued after March 20, 1990, except those facilities exempt under ~~IC 13-7-10-1.5(e)~~ **IC 13-20-1-1**.

(b) In accordance with subsection (a), and in addition to other permit application requirements outlined in this rule, the following are also required:

- (1) A description of the anticipated area that would be served by the facility as indicated by the following:
 - (A) Solid waste management district or districts if established.
 - (B) County, counties, or portions thereof.

- (C) County, counties, and state if the area includes portions outside of Indiana.
- (2) A description of the existing solid waste management facilities that serve the same described area.
- (3) A description of the need that would be fulfilled by constructing the proposed facility as follows:
- (A) For facilities proposed in areas with approved district solid waste management plans, a description of the need identified in the district solid waste management plan required by ~~IC 13-9-5~~; **under IC 13-21-5**.
- (B) For facilities proposed in areas without approved district solid waste management plans, a description of need for the proposed area to be served.
- (4) A description of recycling, composting, or other activities that the facility would operate within the proposed area of service.
- ~~(5) A description of the additional disposal capacity that the facility, if permitted, would provide for the proposed area of service.~~
- ~~(6)~~ (5) Additional information as requested by the commissioner.

(c) The commissioner shall review the submitted application and accompanying materials in accordance with this rule. If it is determined that there is not a local or regional need in Indiana for the solid waste management facility, the commissioner shall deny the permit application. (*Solid Waste Management Board; 329 IAC 11-9-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1939*)

SECTION 6. 329 IAC 11-11-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-11-1 Issuance procedures; original permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-15-3; IC 13-15-5-1; IC 13-15-5-3; IC 13-15-6; IC 13-20-8; IC 13-30-2; IC 36-9-30

Sec. 1. (a) After the commissioner determines that the application is complete, the commissioner shall comply with the procedural requirements of ~~IC 13-7-10-2 and IC 13-7-10-2.5~~; **IC 13-15-3, IC 13-15-5-1, IC 13-15-5-3, and IC 13-15-6-1 through IC 13-15-6-5** that are relevant to an application for an original permit for solid waste incinerator ~~regulated under IC 13-7-21~~; **IC 13-20-8**.

(b) If the commissioner determines that the permit application meets the requirements of this article, and that the facility will be constructed and operated in accordance with the requirements of this article, the permit must be granted. The commissioner may impose such conditions in a permit as may be necessary to comply with the requirements of this article, ~~IC 13-1~~; **IC 13**, and IC 36-9-30.

(c) The notice of the granting of a permit must state that the permit will not become effective until:

- (1) all financial responsibility documents have been executed and delivered to the commissioner in the form and amount specified; and
- (2) any real estate transfers necessary to vest legal title of the real estate upon which the permitted activity is to occur in the name of the owner listed on the application have been completed, executed, and recorded and documents evidencing such transfer have been delivered to the commissioner.

(d) All permits must be issued in the name of the owner of the facility.

(e) Notwithstanding subsection (c)(2), a variance granted under IC 13-7-7-6 [*IC 13-7-7-6 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*] must not be transferred to another person without independent proof of undue hardship or burden by the person seeking the transfer. (*Solid Waste Management Board; 329 IAC 11-11-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940*)

SECTION 7. 329 IAC 11-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-11-2 Issuance procedures; renewal permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-20-8; IC 13-30-2; IC 36-9-30

Sec. 2. (a) After the commissioner concludes that the renewal application is complete, the following is required:

- (1) The commissioner shall comply with the procedural requirements of ~~IC 13-7-10-2 and IC 13-7-10-2.5~~; **IC 13** relevant to an application for a renewal permit for a solid waste incinerator regulated under ~~IC 13-7-21~~; **IC 13-20-8**.
- (2) The commissioner shall review the application to determine whether the facility or operation is in compliance with the plans and specifications as approved in its existing permit. The commissioner may request clarification or supplementation of information submitted in support of the renewal application. The commissioner shall evaluate the facility's compliance record under:

- (A) the operational requirements of 329 IAC 11-7, 329 IAC 11-13, 329 IAC 11-14, 329 IAC 11-15, 329 IAC 11-19, and 329 IAC 11-20 as appropriate; and
- (B) any prior or existing permit conditions.

(b) After the provisions of subsection (a) have been accomplished, if the commissioner determines that the facility will be in compliance with the requirements of this article and the permit conditions, including any additions to or revisions of the conditions in the existing permit, the commissioner shall grant renewal of the permit.

(c) All renewal permits must be issued in the name of the owner of the facility. (*Solid Waste Management Board; 329 IAC 11-11-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940*)

SECTION 8. 329 IAC 11-11-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 11-11-3 Duration of permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. A permit, including a renewal permit, must be issued for a fixed term not to exceed five (5) years. A permit may be modified or revoked prior to the expiration of the term for cause, as provided in section 6 of this rule, or in accordance with conditions set forth in the permit. (*Solid Waste Management Board; 329 IAC 11-11-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940*)

SECTION 9. 329 IAC 11-11-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS

329 IAC 11-11-4 Effect of permit issuance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) The issuance of a permit does not:

- (1) convey any property ~~rights~~ **right** of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other state or local requirements.

(b) The owner ~~and~~ **or** operator of a solid waste facility and the owner or owners of the land upon which a solid waste facility is located shall be liable for any environmental harm caused by the facility. (*Solid Waste Management Board; 329 IAC 11-11-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940*)

SECTION 10. 329 IAC 11-11-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-11-5 Transferability of permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to another person by the permittee, without the need for a new permit or modification or revocation of the existing permit **being required**, if:

- (1) the permittee notifies the commissioner of the proposed transfer at least sixty (60) days before the proposed date of transfer on forms provided by the commissioner;
- (2) a written agreement containing a specific date of transfer of permit responsibility is submitted to the commissioner;
- (3) the transferee has not been convicted under ~~IC 13-7-13-3~~ **IC 13-30-6** or IC 36-9-30-35 and has not had a permit to operate under this article, or previous articles, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, revoked by the commissioner under IC 13-7-10-5 [*IC 13-7-10-5 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*];
- (4) the transferee provides proof of financial responsibility as provided in 329 IAC 10-39 if required by the commissioner; and
- (5) the transferee provides proof that ~~he or she~~ **it** is, or will be, the owner of the facility.

(b) The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied.

(c) Notwithstanding the transfer of a permit, a variance must not be transferred to another person. (*Solid Waste Management Board; 329 IAC 11-11-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047*)

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

329 IAC 11-11-6 Permit revocation and modification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 4-21.5-3-7; IC 13-15-7-1; IC 13-30-2; IC 36-9-30

Sec. 6. (a) The commissioner may revoke or modify a permit issued under this article if cause exists under ~~IC 13-7-10-5(a)~~ **IC 13-15-7-1** and may request an updated application if necessary. When a permit is modified, only the conditions subject to modifications are reopened and subject to review under ~~IC 13-7-10-5~~ **IC 13-15-7** and IC 4-21.5-3-7. If a permit is revoked, the entire permit is reopened and subject to revision, and if the permit is reissued, it may be for a new term.

(b) If the facility is located in an area not suitable for the operation of a solid waste processing facility as specified **by under** this article, the commissioner shall consider this issue as a sufficient basis for denying the modification or for revoking the permit unless the permittee demonstrates to the commissioner that continued use of the facility will not pose a threat to human health or the environment.

(c) **Except as provided under 329 IAC 11-3-4**, to request a change in the facility ~~plans or operation permit~~, the permittee ~~may~~ **shall** request that the commissioner modify the permit. The permittee shall submit the requested modification and rationale for such modification. If the commissioner determines that the requested modification is consistent with the standards established in this article, the commissioner shall grant the modification. Only the conditions subject to modification are reopened. The commissioner shall give notice of the determination on the modification in accordance with ~~IC 13-7-10-5~~ **IC 13-15-7** and IC 4-21.5-3-7. (*Solid Waste Management Board; 329 IAC 11-11-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1941*)

SECTION 12. 329 IAC 11-14-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-14-1 Quarterly reports

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

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 1. (a) A quarterly tonnage report of solid waste received at the solid waste processing facility must be submitted to the commissioner by the owner, operator, or permittee of that facility.

(b) The report required by subsection (a) must be submitted on or before the fifteenth day of the month immediately following the end of the calendar quarter being reported. If the submittal date falls on a Saturday, Sunday, or national or state legal holiday, the submittal date will be the next day that is not a Saturday, Sunday, or holiday.

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the **permitted** solid waste processing facility that is open to accept solid waste for processing unless **one (1) of the following applies**:

(1) The owner, operator, or permittee of the solid waste processing facility has:

(A) ceased accepting solid waste for a period of at least one (1) calendar quarter; and

~~(2) the owner, operator, or permittee of the solid waste processing facility has~~

(B) sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable.

(2) The solid waste processing facility is not required to obtain a permit under this article.

(3) The solid waste processing facility is only required to obtain a permit by rule under 329 IAC 11-19-2(a).

(d) The solid waste hauler shall provide the owner, operator, or permittee of the solid waste processing facility with the origin or origins of the solid waste delivered to the solid waste processing facility. The hauler shall estimate, by percent, the type and amount of solid waste originating in each county and state, or country if other than the United States, if the load contains solid waste from more than one (1) county, state, or country.

(e) The owner, operator, or permittee of the solid waste processing facility shall submit the quarterly tonnage report, required by **under** subsection (a) as follows:

(1) On the most current paper **or electronic** report form prescribed by the department. The owner, operator, or permittee may obtain a quarterly tonnage report form from the department. The form:

- (A) may be photocopied **or electronically copied** by the owner, operator, or permittee of the solid waste processing facility; and
- (B) in its most current format, may be computer generated by the owner, operator, or permittee of the solid waste processing facility.

(2) The original of each paper report must be signed by the facility owner, operator, or permittee as certification of report accuracy.

(3) Each report must be accurate, legible, and complete.

(4) ~~One (1) additional paper copy of each original paper report must be submitted with the original paper report required in subdivision (6).~~ **Each electronic report must contain a unique identification code assigned to the permitted facility owner, operator, or permittee by the commissioner as certification of report accuracy and authenticity.**

(5) The type and usage of electronic reporting formats **other than described in subdivision (1)** must be approved by the ~~department:~~ **commissioner.**

(6) The paper report and any approved format required by this subsection must include at least the following information:

- (A) The weight in total tons of solid waste received at the facility for that calendar quarter compiled by waste type and origin.
- (B) The county and state in which the solid waste originated. If the solid waste originated outside of the United States, the country must be designated. The origin must be provided to the solid waste processing facility by the solid waste hauler as described in subsection (d).
- (C) The type, total weight in tons, and final destination of solid waste received at and transported off-site from the solid waste processing facility for reuse, recycling, or disposal.
- (D) Waste types include the following:
 - (i) Municipal solid waste.
 - (ii) Construction/demolition debris.
 - (iii) **Special Pollution control** waste.
 - (iv) Other solid waste.

(f) If the owner, operator, or permittee of the solid waste processing facility ascertains that there is an error or errors in any report previously submitted as required by subsection (a), a revised report reflecting the correct information must be submitted in the same format as the original submission. The revised report must:

- (1) have "Amended" written or typed at the top of each page of the resubmitted report; and
- (2) be submitted before or with the submission of the next quarterly tonnage report after ascertaining the error.

(g) Copies of reports required by this section must be maintained on-site by the facility owner, operator, or permittee for three (3) years after the submittal date of the report and be made available during normal operating hours for on-site inspection and photocopying by a representative of the department.

(h) The facility owner, operator, or permittee shall maintain the documentation on-site to substantiate reports required by this section. Such documentation must be maintained by the facility owner, operator, or permittee for three (3) years after the report's submittal date and be made available during normal operating hours for on-site inspection and photocopying by a representative of the department.

(i) Failure to submit reports and copies as required by this section, or maintain copies of reports and records as required by this section, constitutes an operational violation under 329 IAC 11-1-1.

(j) A facility required to report by subsection (a), which does not operate weighing scales for weighing solid waste, must use the most applicable of the following conversion factors to determine the weight of municipal solid waste from the volume of municipal solid waste:

- (1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.
- (2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste. **or**
- (3) One (1) cubic yard of baled solid waste equals one (1) ton of solid waste.

(k) The owner, operator, or permittee of any solid waste processing facility accepting construction/demolition debris or **special pollution control** waste, required to report under subsection (a), that does not operate weighing scales for weighing solid waste, shall use accepted engineering practices, production information, or other methods approved by the ~~department~~ **commissioner** to

estimate the weight of these solid waste types received at the facility. (*Solid Waste Management Board; 329 IAC 11-14-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1943*)

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 August 21, 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 proposed amendments and readoption of 329 IAC 11-9; 329 IAC 11-11; and 329 IAC 11-14 (LSA #95-8).

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 and readoption. 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 Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 299-0211 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 233-6087 (TT). Please provide a minimum of 72 hours' notification. Copies of these rules are now on file at the Office of Solid Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality