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TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD #00-65(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING HAZARDOUS WASTE STAGING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments concerning hazardous waste staging. The amendments will address temporary staging at permitted hazardous waste treatment, storage, and disposal facilities outside of the permitted storage areas, at storage areas subject to interim status requirements and recycling facilities under 40 CFR 261.6(c)(2). For the last several years, staging has been addressed by state policy. The department recognizes that temporary staging is a necessary activity that is not currently reflected in the state rules. Current rules that are strictly interpreted do not allow this activity without a permit. Reliance on discretionary policies complicates enforcement and leaves the regulated community vulnerable to policy shifts or implementation inconsistency. A rule provides protection for the regulated community by allowing staging, by being consistent in implementation and not requiring a permit for storage. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1789).

CITATIONS AFFECTED: 329 IAC 3.1-4-1; 329 IAC 3.1-4-18.5; 329 IAC 3.1-4-23.5; 329 IAC 3.1-6-2; 329 IAC 3.1-9-4; 329 IAC 3.1-10-4; 329 IAC 3.1-13-2; 329 IAC 3.1-13-21.

AUTHORITY: IC 13-14-8; IC 13-15-1-3; IC 13-22-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

The hazardous waste rules define any temporary holding of waste at a given location as storage. Storage ordinarily requires a permit unless specifically excluded by the rules. The temporary holding of waste during loading and unloading, and movement between permitted units is technically storage. This temporary storage is obviously a necessary part of the management of the hazardous waste. The hazardous waste rules have never addressed this type of storage that has been called "staging" by the regulated community. Staging has been handled as a matter of policy in an effort to apply common sense. However, by using policy, not all permits have had consistent staging allowances. By using policy, the regulated facilities are open to different interpretation of the policy by inspectors or other enforcing agencies. By using policy, the regulated facilities are open to more stringent enforcement of the storage permit requirement. An allowance for hazardous waste staging either by policy or rule helps prevent hazardous waste storage off-site at transfer facilities, which could have the potential for unsupervised spills causing serious environmental impacts.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from April 1, 2000, through April 30, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Anthony C. Sullivan, Barnes and Thornburg, representing Quemetco, Inc. (Q)

Michael T. Scanlon, Barnes and Thornburg (BT)

Mark E. Shere, representing Bethlehem Steel Corporation (MS)

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

Comment: The rules should provide a ten-day staging period for facilities that reclaim spent lead-acid batteries that would allow such facilities to stage the batteries on delivery trucks prior to processing for that period of time. A staging period would allow for more efficient plant operations and would benefit the environment. A staging period is necessary for plant operations because of batteries can, at times, outnumber the amount that can be processed immediately, particularly when equipment breaks down or during holidays or weekends. Staging the batteries on-site in trailers is environmentally beneficial because: (1) staging at Quemetco's facility is beneficial because that facility maintains a facility-wide spill collection system, whereas if batteries are not staged at Quemetco's site, they can be staged off-site with no regulation or spill containment and (2) staging on trailers minimized the double-handling of batteries which helps prevent spills. A ten-day period is a reasonable staging time period because it is long enough to allow Quemetco to conduct its normal operations and short enough to ensure that large numbers of batteries cannot accumulate. (Q)

Response: IDEM looked at what other states allow regarding staging. Other states allow staging, however, no other state allows 10 days for staging. Seventy two hours is the maximum allowed by other states. This time frame has also not been challenged by EPA as a recognition of the necessity for staging. Seventy two hours is more than sufficient for facility management of hazardous wastes. To allow staging for 10 days would be less stringent than EPA rules and their interpretation.

Comment: United States Environmental Protection Agency (EPA) agrees that temporary staging of batteries at battery recycling facilities

for up to several weeks does not constitute storage of hazardous waste and is therefore exempt from the hazardous waste regulations. In considering this issue, EPA has stated that “we ordinarily do not consider this temporary holding to constitute storage.” Attachment A is a copy of a letter which provides a more detailed analysis of EPA’s position and that letter is incorporated into these comments by reference. (Q)

Response: The comment takes the EPA statement out of context. The EPA requested comments on whether the federal rules should be revised to allow staging. The federal regulations were never changed. The department and the regulated community should always be aware that the state rules must remain as stringent as the federal regulations. The department is comfortable that allowing staging for the times proposed in this rule is within the discretion EPA has given states.

Comment: No reasons exist for IDEM to impose a more stringent rule than EPA requires. (Q)

Response: EPA regulations do not address staging. IDEM’s rule is not more stringent than the EPA regulations. Any staging provision that Indiana would propose is to clarify when permits are required for temporary holding. Just having a staging rule could mean that the rules are less stringent. EPA will determine if the rule is less stringent when the department submits the Amended Authorization Application after the rule is effective. Remember, the federal preamble to rules and policy letters are not equivalent to statute, regulation, or case law. This is also one of the reasons that Indiana prefers to address staging in a rule. It provides protection for the regulated community.

Comment: The alternative would be for batteries to be staged off-site in a completely unregulated fashion. (Q)

Response: Currently, we do have essentially unregulated storage of batteries at facilities because batteries are exempt until the batteries arrive at the recycling facility. This is an issue with the battery rules and is beyond the scope of this rulemaking.

Comment: As an initial comment, we believe IDEM should extend this comment period for at least an additional 30 days. As indicated in the Notice, this regulation has the potential to impact each and every facility in the State that manages hazardous waste. As IDEM has correctly recognized, each large and small quantity hazardous waste generator, recycler, and treatment, storage, and disposal facility in the state will be faced with complying with this regulation if it is promulgated. We believe this rulemaking will result in substantial interest in the regulated community and suggest it would be in the best interest of both IDEM and the regulated community for IDEM to extend this first comment period thereby allowing it to receive additional information prior to preparing a draft rule. IDEM should also promptly convene a work group made up of TSDs, recyclers, and generators to work with IDEM in determining the specifics of any regulation. (BT)

Response: The department has extended the second notice comment period to 60 days, as the department believes that it is more productive to provide the commentators with specific language for comment. This basic, concise rule implements what has been an agency policy and in permits for years. Several comment periods will be provided as per the statute and the opportunity to address the board at two public hearings. The department is willing to meet with any interested parties to hear concerns. If a workgroup is needed on this rulemaking one will be convened.

Comment: The notice identified the seven factors the board must consider when adopting rules. However, the Notice failed to provide any discussion regarding IDEM’s assessment of how each of those factors applies to this rulemaking. IDEM must provide this information so the regulated community can comment regarding IDEM’s evaluation of those factors. (BT)

Response: The statute at IC 13-14-8-4 requires that the board take into account the seven factors when adopting rules. The notice is not assessed or considered by the board. There is no requirement for IDEM to provide an assessment of the seven factors. The department provided as much information as was known at the time the First Notice was published.

Comment: The notice states “U.S. EPA has deferred to the states on this [staging] matter.” Because EPA has deferred staging to the states, it appears EPA does not consider it to pose a significant enough threat to human health or the environment to warrant regulation. If EPA does not consider it necessary to regulate staging on a national basis, why has IDEM now determined that rulemaking is required at the state level? The Notice does not identify any specific threats to human health or the environment that will be addressed by this rule nor does it specify any problems that have arisen that require the promulgation of a staging regulation. Therefore, please explain in detail why a staging regulation is necessary and what purpose the rule is intended to fulfill. Without this information, it will be extremely difficult for the regulated community to provide suggestions on alternative ways to achieve that purpose. (BT) (MS)

Response: The federal definition of storage does not provide the regulated community with any relief or leeway. Storage must have a permit and recycling facilities must reclaim the hazardous waste immediately without storage. The department does not believe that the rule currently reflects what is occurring at these permitted hazardous waste facilities and recycling facilities. For the protection of the regulated community and so there is consistent application of the staging allowance, a staging rule is necessary. Without the department’s policy regarding staging, which will be formalized into rule, all storage would be required to be permitted.

Comment: Regarding the applicability of a staging rule for generators, we are not aware of any information supporting the proposition that such a rule is necessary. The current hazardous waste regulations allow generators to accumulate hazardous waste anywhere in their facility so long as they comply with the requirements of 40 CFR 262.34. IDEM has not identified any compelling need to regulate the movement of waste from the 90-day accumulation area(s) to shipping areas (e.g. loading docks). By promulgating a new staging regulation, IDEM will potentially create unnecessary record keeping requirements as well as another layer of

complexity in an already complex regulatory program. Please explain in detail why IDEM believes a staging regulation applicable to generators is necessary, the costs and benefits of such a regulation, and existing threat to human health and the environment that such a regulation would address. (BT)

Response: This rule will not apply to generators unless they are also a permitted facility, recycling facility under 329 IAC 3.1-6-2(4), or a facility under the interim status standards. The staging rule will be protection for the regulated community. It will formally allow, by rule, the staging of hazardous waste at the identified facilities. It will be approved by U.S. EPA by the authorization of the rule. It will make all permits consistent with the state rules. There will be no costs to the regulated community. There are only benefits and the assurance of knowing that the facility management, the permit, the facility inspector and the rules are all using the same promulgated and authorized requirements and allowances.

Comment: Regarding the applicability of a staging rule for treatment, storage, disposal, and recycling facilities, IDEM has not clearly stated why it is necessary to promulgate formal regulations addressing “staging” activities. These activities include the movement and management of hazardous waste that has been received by a facility prior to its placement in permitted storage areas, the movement of hazardous waste between permitted storage areas or the removal of hazardous waste from a permitted storage area followed by placement of the waste back into the permitted storage area, and the movement and management of hazardous waste prior to shipment off-site. Each of these activities are critical to the efficient operation of a TSD. TSDs are already highly regulated and inspected facilities with highly trained employees, emergency response plans, and equipment to handle releases of material, including releases that might occur during “staging.” Therefore, creating a new staging regulation may not be necessary. However, if IDEM believes a specific staging regulation applicable to TSDs and recyclers is necessary, please explain in detail why it is necessary, the costs and benefits of such a regulation, and existing threat to human health and the environment that such a regulation would address. (BT)

Response: The department is in agreement with the commentor. The facilities do utilize hazardous waste staging. The rule will reflect the actual management of the hazardous waste at TSDs and unpermitted recycling facilities. It will reflect what has been a departmental policy for several years. A rule will promote consistency with the permits and protect the regulated entities by allowing for staging and putting that allowance specifically in the rules.

Comment: We believe IDEM must meet with the regulated community to determine the appropriate time periods for staging based on the operational constraints that generators and TSDs face (e.g. scheduling rail or truck shipments, performing necessary analyses, managing rejected loads, resolving discrepancies regarding analytical results or paperwork). While we do not know how long a period will be necessary for staging in all situations, if IDEM intends to create a “one-size-fits-all” staging rule with one staging period should be no less than 10 days. The staging period would be consistent with the most classic form of staging under the hazardous waste regulations-storage by transporters at transfer facilities. Obviously, neither IDEM nor EPA has any concerns that a 10 day time period is not protective of human health and the environment because neither agency has changed the regulations applicable to transfer facilities to decrease the amount of time that waste can be stored without a permit. Further, TSDs and recyclers are better prepared than transfer facilities to respond to accidental releases during “staging.” TSDs and recyclers are also in a better position to properly manage the waste during staging because of existing facility operating and inspection procedures. Therefore, if IDEM promulgates a staging rule with only one staging period, it should be no less than 10 days. If IDEM is in disagreement with a minimum 10 day staging period, please explain in detail the rationale for the disagreement. (BT)

Response: The staging rule does not apply to generators unless they are also a permitted treatment, storage, or disposal facility, a recycling facility under 329 IAC 3.1-6-2(4), or a facility under the interim status standards. There are several reasons that the limitation or staging time allowance is no more than 72 hours as compared to the 10 days allowed at a transfer facility. The 10 days at a transfer facility was established based on normal occurrences that happen during transportation (i.e., breakdowns, maintenance, and consolidations of small loads into large loads for hauling efficiency, etc.). The transportation process has safeguards built in with the manifest system that triggers notices from the generator if the generator doesn't receive a copy of the manifest in a certain time frame. The 72 hours for staging is also set up to recognize the normal course of events at a recycling facility. This will allow time for sampling, testing, and rejection back to the generator. The time allowed is less because once a waste is received at an identified facility the waste needs to be placed in the security of a regulated unit as soon as possible.

Comment: Bethlehem appreciates IDEM's interest in distinguishing unregulated “staging” of hazardous waste from regulated “storage.” The agency has not provided enough specifics, however, about the practical problem it believes needs to be fixed. According to the agency, “failure to have staging in the rules has created enforcement and permitting problems.” What are the problems? At what types of facilities have they occurred? Has any actual harm to the environment resulted? Without answers to these basic question, it is difficult for the outside community to provide specific comment. (MS)

Response: The purpose of this rulemaking is to correct the inconsistencies in permit requirement for staging and the rule. There is also the problem of the stringency of the federal requirement verses what actually takes place during the management of the waste at these facilities. The rule will address staging by regulated recycling facilities that are exempt from permitting because the facilities don't “store” prior to recycling. Currently these facilities are relying wholly on agency discretionary policies to allow 72 hour staging. The department is unaware of any harm to the environment that staging has caused but there is an environmental risk managing hazardous waste. It is doubtful that this rule would be promulgated if environmental harm has occurred by the use of staging for hazardous waste.

Comment: In general terms, it appears that the following revision to the regulatory definitions would provide the clarification that IDEM is seeking:

Rule 4. Definitions

329 IAC 3.1-4-23.5 "Staging" defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected:

Sec. 23.5. "Staging" means the temporary holding of hazardous waste, outside of the primary storage and accumulation areas, for a period of up to 72 hours, in connection with transportation, recycling, or treatment.

329 IAC 3.1-4-23.7 "Storage" defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected:

Sec. 23.6. "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. "Storage" does not include "staging" as defined at 329 IAC 3.1-4-23.5. (MS)

Response: The department is using the language that was provided with some modifications.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#00-65(SWMB)[HW Staging]

Marjorie Samuel

Rules, Outreach and Planning Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by January 4, 2002.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 3.1-4-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-4-1 Applicability

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

Affected: IC 13-14-8; IC 13-11-2; 40 CFR 260 through 40 CFR 270

Sec. 1. (a) In addition to the definitions contained in IC 13-11-2 and in this rule, the definitions contained in 40 CFR 260 through 40 CFR 270 are hereby adopted and incorporated by reference and made applicable to this article, except as provided otherwise in subsection (b).

(b) The following are exceptions to federal definitions:

(1) Delete the definitions of "existing tank system" or "existing component" in 40 CFR 260.10 and substitute the definition under section 11 of this rule.

(2) Delete the definitions of "new tank system" or "new tank component" in 40 CFR 260.10 and substitute the definition under section 18 of this rule.

(3) In addition to the definition of "universal waste" in 40 CFR 260.10, add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).

(4) In 40 CFR 260.10, to the definition of "storage" add the sentence "Storage does not include staging as defined under section 23.5 of this rule".

(Solid Waste Management Board; 329 IAC 3.1-4-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 920; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3354; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. 329 IAC 3.1-4-18.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-4-18.5 "Operating day" defined

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

Affected: IC 13-22

Sec. 18.5. "Operating day" means, only for purposes of 329 IAC 3.1-9-4 and 329 IAC 3.1-13-21, any twenty four (24) hour period during which at least a partial shift is worked by employees who process, treat, place into storage, or dispose of hazardous waste at the facility. (Solid Waste Management Board; 329 IAC 3.1-4-18.5)

SECTION 3. 329 IAC 3.1-4-23.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-4-23.5 "Staging" defined

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

Affected: IC 13-22

Sec. 23.5. "Staging" means, in connection with transportation, recycling, or treatment, the temporary holding of hazardous waste at the following:

- (1) Outside the permitted storage unit that is permitted under 329 IAC 3.1-13.**
- (2) Outside of the storage areas subject to interim status requirements under 329 IAC 3.1-10.**
- (3) Recycling facilities under 40 CFR 261.6(c)(2).**

Staging within the specified time allowed by rule does not require a permit under 329 IAC 3.1-13. (Solid Waste Management Board; 329 IAC 3.1-4-23.5)

SECTION 4. 329 IAC 3.1-6-2, AS AMENDED AT 24 IR 2432, 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. **Facilities that recycle recyclable materials under 40 CFR 261.6(c)(2) may stage hazardous waste pursuant to 329 IAC 3.1-10-4.**

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) Delete 40 CFR 261, Appendix IX.

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

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

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

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

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

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

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

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

(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR

2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432)

SECTION 5. 329 IAC 3.1-9-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-9-4 Exceptions and additions; staging

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

Affected: IC 13-22-2; 40 CFR 264, Subpart J

Sec. 4. A permitted facility may have staging, as defined under 329 IAC 3.1-4-23.5, of hazardous waste as follows:

(1) Incoming hazardous waste as follows:

(A) At facilities that operate without permitted storage units, staging is up to three (3) calendar days.

(B) At facilities that have permitted storage units, staging is up to three (3) operating days.

(2) Hazardous waste staged between permitted units, for eight (8) hours.

(3) Hazardous waste staged immediately prior to leaving the facility, for twenty-four (24) hours.

(4) The facility must inspect for leaking containers, overpack any leaking containers and cleanup any releases at the staging area.

(5) The facility must keep a map locating staging areas or a log identifying the location of staging areas at the facility.

(Solid Waste Management Board; 329 IAC 3.1-9-4)

SECTION 6. 329 IAC 3.1-10-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-10-4 Exceptions and additions; staging

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

Affected: IC 13-22-2; 40 CFR 264, Subpart J

Sec. 4. A facility with interim status may have staging, as defined under 329 IAC 3.1-4-23.5, of the hazardous waste as follows:

(1) Incoming hazardous waste for seventy-two (72) hours.

(2) Hazardous waste between units for eight (8) hours.

(3) Hazardous waste leaving the interim facility for twenty-four (24) hours.

(4) The facility must inspect for leaking containers, overpack any leaking containers and cleanup any releases at the staging area.

(5) The facility must keep a map locating staging areas or a log identifying the locations of staging areas at the facility.

(Solid Waste Management Board; 329 IAC 3.1-10-4)

SECTION 7. 329 IAC 3.1-13-2, AS AMENDED AT 24 IR 2436, SECTION 7, 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 definitions in 40 CFR 270.2, add the definition of "staging" as "Staging" means, in connection with transportation, recycling, or treatment, the temporary holding of hazardous waste at the following:

(A) Outside the permitted storage unit that is permitted under 329 IAC 3.1-13.

(B) Outside of the storage areas subject to interim status requirements under 329 IAC 3.1-10.

(C) Recycling facilities under 40 CFR 261.6(c)(2).

Staging within the specified time allowed by rule does not require a permit under 329 IAC 3.1-13.

(5) In 40 CFR 270.2, in the definition of "storage", add "Storage does not include staging as defined in this section."

~~(6)~~ (6) Delete 40 CFR 270.3.

~~(7)~~ (7) Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.

~~(8)~~ (8) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.

~~(9)~~ (9) Delete 40 CFR 270.14(b)(18).

~~(10)~~ (10) Delete 40 CFR 270.14(b)(20).

- ~~(9)~~ **(11)** In 40 CFR 270.32(a), delete references to “alternate schedules of compliance” and “considerations under federal law”. These references in the federal permit requirements are only applicable to federally issued permits.
- ~~(10)~~ **(12)** 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.
- ~~(11)~~ **(13)** Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.
- ~~(12)~~ **(14)** Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.
- ~~(13)~~ **(15)** Delete 40 CFR 270.64.
- ~~(14)~~ **(16)** In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

(Solid Waste Management Board; 329 IAC 3.1-13-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)

SECTION 8. 329 IAC 3.1-13-21 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-13-21 Exceptions and additions; staging

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264, Subpart J

Sec. 21. A permitted facility may have staging, as defined under 329 IAC 3.1-4-23.5, of hazardous waste as follows:

(1) Incoming hazardous waste as follows:

(A) At facilities that operate without permitted storage units, staging is up to three (3) calendar days.

(B) At facilities that have permitted storage units, staging is up to three (3) operating days.

(2) Hazardous waste staged between permitted units, for eight (8) hours.

(3) Hazardous waste staged immediately prior to leaving the facility, for twenty-four (24) hours.

(4) The facility must inspect for leaking containers, overpack any leaking containers and cleanup any releases at the staging area.

(5) The facility must keep a map locating staging areas or a log identifying the location of staging areas at the facility.

(Solid Waste Management Board; 329 IAC 3.1-13-21)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 19, 2002, at 1:30 p.m., 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 329 IAC 3.1.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 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) 233-6565 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Central File Room, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality