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TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF SECOND NOTICE OF COMMENT PERIOD #02-160(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES IMPLEMENTING INDIANA'S GROUND WATER QUALITY STANDARDS (327 IAC 2-11) IN THE HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed new draft rule language for amendments to rules for hazardous waste management at 329 IAC 3.1-9-2 to amend provisions in the rules for hazardous waste treatment, storage, and disposal facilities to be consistent with new ground water quality standards at 327 IAC 2-11. By this notice, IDEM is soliciting public comment on this new 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: July 1, 2002, Indiana Register (25 IR 3495).

Second Notice of Comment Period: January 1, 2003, Indiana Register (26 IR 1358).

CITATIONS AFFECTED: 329 IAC 3.1-9-2.

AUTHORITY: IC 13-14-9; IC 13-18-17; IC 13-22-2; P.L.231-2003, SECTION 6.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

IC 13-18-17-5 required the water pollution control board to adopt rules establishing ground water quality standards to:

- establish minimum compliance levels for ground water quality monitoring at regulated facilities;
- ban the discharge of effluents into potable ground water;
- establish health protection goals for untreated water in water supply wells; and
- establish concentration limits for contaminants in ambient ground water.

The new ground water quality standards at 327 IAC 2-11 were effective on March 5, 2002, and apply to all IDEM programs as required by IC 13-18-17-5.

The office of land quality completed a survey of solid and hazardous waste rules in August 2001 and found that the rules for ground water protection for permitted hazardous waste facilities were not consistent with the new ground water quality standards. This rule would amend 329 IAC 3.1-9-2 to be consistent with the new ground water quality standards.

On January 1, 2003 (26 IR 1358), we published a draft rule to implement the requirements of 327 IAC 2-11. No comments were received on that draft rule. Since publication of the draft rule, we have determined that some changes to the originally proposed draft rule would produce a simpler, more effective rule that would allow department staff and facilities to apply the ground water quality standards more appropriately and consistently to the affected facilities. This notice contains the revised draft rule language.

Because the changes proposed in this draft rule are significant, we are publishing this revised draft rule in its entirety for public review and comment before presenting the rule to the solid waste management board for preliminary adoption.

ELEMENTS NOT IMPOSED UNDER FEDERAL LAW (P.L.240-2003)

As required by IC 13-14-9-4 (as amended by P.L.240-2003), no element of this rule is imposed under federal law. Each element is in addition to the existing federal hazardous waste management program in 40 CFR 261 and 40 CFR 264.

The ground water protection standards in 327 IAC 2-11, imposed under IC 13-18-17-5, include a number of substances that are not listed in the ground water protection requirements in 40 CFR 264, Subpart F. In this draft rule we are proposing to add those additional substances to 329 IAC 3.1-9-2 and make conforming changes, as follows:

- We are proposing to add eighteen (18) contaminants listed in 327 IAC 2-11-6, in addition to the list of four hundred eighty-two

(482) constituents in 40 CFR 261, Appendix VIII, that can be specified in the facility permit under 40 CFR 264.93(a) as constituents to which the ground water protection standard in 40 CFR 264.92 applies. These additional constituents are contaminants listed in 327 IAC 2-11-6 that are not listed in Appendix VIII. For each hazardous waste facility that is subject to 40 CFR 264, Subpart F, the department specifies certain hazardous waste constituents that have been detected in ground water underlying the facility and can be reasonably expected to be in or derived from waste contained in the facility. The facility must monitor for these constituents and reduce the concentrations of these constituents in the ground water to a level below the concentration limits set under 40 CFR 264.94. Because each facility's list of constituents is unique to that facility and is determined by the waste disposed of in that facility, these additional contaminants may or may not be added to a facility's permit. Because the existing federal regulation does not include these contaminants, it is inadequate to provide the protection required by 327 IAC 2-11 and IC 13-18-17-5.

- In addition to 40 CFR 264.93(b), we are proposing to allow the department to consider the overall requirements of the ground water quality standards in 327 IAC 2-11 in addition to other factors when deciding to exclude a constituent from a facility permit. Because the existing federal regulation does not provide for consideration of these factors, it is inadequate to provide the protection required by 327 IAC 2-11 and IC 13-18-17-5.

- We are proposing to replace 40 CFR 264.94(a), Table 1, to change the maximum concentration allowed for six (6) constituents to be no less stringent than the numeric criteria in 327 IAC 2-11-6. Because the existing federal regulation sets higher concentrations for these contaminants, it is inadequate to provide the protection required by 327 IAC 2-11 and IC 13-18-17-5.

- In addition to 40 CFR 264.94(b), we are proposing to allow the department to consider the overall requirements of the ground water quality standards in 327 IAC 2-11 in addition to other factors when deciding to exclude a constituent from a facility permit. Because the existing federal regulation does not provide for consideration of these factors, it is inadequate to provide the protection required by 327 IAC 2-11 and IC 13-18-17-5.

- We are proposing to list seventeen (17) contaminants that the department may require a facility to monitor for under 40 CFR 264.99(g), in addition to the two hundred twenty-two (222) constituents currently listed in the ground water monitoring list in 40 CFR 264, Appendix IX. These additional substances are contaminants listed in 327 IAC 2-11-6 that are not already on the ground water monitoring list. The department could require a facility to analyze ground water samples for one (1) or more of these additional contaminants if we determined it was appropriate based on the waste disposed of at that facility and the facility's history. Because the existing federal regulation does not include these contaminants, it is inadequate to provide the protection required by 327 IAC 2-11 and IC 13-18-17-5.

AVAILABILITY OF MATERIALS USED TO DEVELOP THE DRAFT RULE

As required by IC 13-14-9-4 (as amended by P.L.240-2003), the office of land quality relied on the following information to develop this draft rule:

- 40 CFR 260 through 40 CFR 270.
- 327 IAC 2-11.
- IC 13-18-17-5.
- "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998).
- A variety of information on ground water and drinking water test methods available from the U.S. Environmental Protection Agency at <http://www.epa.gov/OGWDW/methods/>.
- "Comparison of the Ground Water Quality Standard Rules to Office of Land Quality Rules," August 30, 2001, prepared by the office of land quality.
- Discussions with hazardous waste facility permit managers and other department technical staff.

These materials are on file in the Rules, Planning and Outreach Section, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana and are available for public inspection.

The office of water quality relied on additional scientific and technical materials to develop the ground water quality standards in 327 IAC 2-11. These materials are on file in the Regulatory Development Section, Office of Water Quality, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are available for public inspection.

POTENTIAL FISCAL IMPACT

The fiscal impact of each of these amendments is not known at this time. Existing permits for active and closed facilities have not been reviewed to determine if addition of any of these contaminants to the ground water monitoring and corrective action requirements would be appropriate. In any case, the department would not add a contaminant to a permit or require testing for an additional contaminant unless information available about the facility indicated that action was appropriate. Even if a contaminant

is added, it is not clear if that action would impose additional testing costs, or if testing for that contaminant would be included in existing testing procedures. As a result, the economic impacts of these amendments cannot be quantified at this time.

This rule specifically solicits comment on the fiscal impact of each of the amendments proposed in this rule, including, but not limited to:

- (1) which regulated entities would be impacted by each of the amendments; and
- (2) what is the potential economic impact to these entities of each amendment that would affect them.

EFFECT ON INDUSTRIES LISTED IN PUBLIC LAW 231-2003, SECTION 6

In accordance with P.L.231-2003, SECTION 6 (HEA 1221), this rule cannot require a person who engages in an industry listed in that section to comply with a standard of conduct that exceeds the standard of conduct established in the related federal regulation or regulatory policy, until July 1, 2005. Therefore, because the requirements proposed to be adopted in this rule are not imposed under federal law and exceed the standard of care established in the related federal regulation, they will not apply to persons who engage in any of the following industries listed by Standard Industry Classification in P.L.231-2003, SECTION 6, until July 1, 2005:

- 3312: steel works, blast furnaces (including coke ovens), and rolling;
- 3321: gray and ductile iron foundries;
- 3322: malleable iron foundries;
- 3324: steel investment foundries;
- 3325: steel foundries, not elsewhere classified;
- 3365: aluminum foundries;
- 3366: copper foundries;
- 3369: nonferrous foundries, except aluminum and copper.

PUBLIC PARTICIPATION AND WORKGROUP INFORMATION

An external workgroup may be established to discuss issues involved in this rulemaking. The workgroup, if established, would be made up of department staff and a cross-section of stakeholders. If you believe a work group would further the purposes of this rule and result in better rulemaking, and you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

#02-160 (SWMB) [Ground Water Quality Standards]
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

If too many applications are received to form a functional work group, the department will select a representative group from the applications on file.

The formation of a work group, if it occurs, will be announced on the department's rulemaking Web site: <http://www.in.gov/idem/rules/>.

If a work group is formed and you wish to provide comments to the work group on the rulemaking, attend meetings, or submit suggestions related to the work group process, please contact Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

The public is also encouraged to submit comments and questions directly to members of the work group who represent their particular interests in the rulemaking. If a work group is established, a list of work group members and the interests they represent will be provided on request.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from July 1, 2002, through July 31, 2002, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from January 1, 2003, through January 31, 2003, on IDEM's draft rule language. IDEM received no comments in response to the second notice of public comment period.

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:

#02-160(SWMB) [Hazardous Waste Ground Water Quality Standards]

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, IN 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana. Comments may be submitted by facsimile at (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by July 31, 2003.

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

DRAFT RULE

SECTION 1. 329 IAC 3.1-9-2 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 13-14-8; IC 13-18-17; IC 13-22-2-4

Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; P.L.231-2003, SECTION 6; 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 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(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.

(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.

(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, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015 within five (5) working days after receiving the manifest.

(6) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".

(7) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

(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."

(9) In 40 CFR 264, Subpart F, the term "hazardous constituent" includes the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Ethylbenzene	100-41-4
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including Radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9
Styrene	100-42-5

(10) In 40 CFR 264.93(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(11) Delete 40 CFR 264.94(a)(2), Table 1, and substitute the following:

Table 1. Maximum Concentration of Constituents for Ground Water Protection

Constituent	Maximum Concentration (mg/L)
Arsenic	0.05
Barium	1.0
Cadmium	0.005
Chromium	0.05
Lead	0.015
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.0002
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.04
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.003
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

(12) In 40 CFR 264.94(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(13) In 40 CFR 264.99(g), in addition to the constituents listed in 40 CFR 264, Appendix IX, the commissioner may require a facility to monitor for the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including Radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9
(9) (14) Delete 40 CFR 264, Subpart H, dealing with financial requirements and substitute 329 IAC 3.1-15. (10) (15) Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J, are under section 3 of this rule. (11) (16) In 40 CFR 264.221(e)(2)(i)(C), delete “permits under RCRA Section 3005(c)” and insert “with final state permits”. (12) (17) Delete 40 CFR 264.301(l). (13) (18) Delete 40 CFR 264, Appendix VI. (14) (19) In 40 CFR 264.316(b), delete “(49 CFR Parts 178 and 179)” and substitute “(49 CFR Part 178)”. (15) (20) In 40 CFR 264.316(f), delete “fiber drums” and substitute “nonmetal containers”. (21) The requirements in subdivisions (9) through (13) do not apply to any of the following industries to a greater extent than the standard of conduct established in the related federal regulation or regulatory policy, until July 1, 2005:	
Industry	Standard Industry Classification Code
Steel works, blast furnaces (including coke ovens), and rolling	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries, not elsewhere classified	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries, except aluminum and copper	3369
<i>(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; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433)</i>	

Notice of Public Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the IC 13-14-9 Notices section of the Indiana Register.

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

Copies of these rules are now on file at the IDEM Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality