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IN THIS ISSUE

INDIANA REGISTER

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

The Indiana Register is an official monthly publication of the state of Indiana. The Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as executive orders and attorney general's opinions, in the Indiana Register in the order in which the Indiana Legislative Council receives the documents.

The Indiana Administrative Code is an official annual publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order.

The Indiana Register acts as a source of information about the rules being proposed by state agencies and acts as an "advance sheet" to the Indiana Administrative Code. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the Indiana Register. Although a rule becomes effective without publication in the Indiana Register, an agency must file an adopted and approved rule with the Indiana Legislative Council. The Council publishes these final rules in the Indiana Register.

RETENTION SCHEDULE

A person must consult the following publications to find the current rules of state agencies:

(1) 2004 Indiana Administrative Code (CD-ROM version).

(2) Volume 27 of the Indiana Register (CD-ROM version).

The Indiana Administrative Code and Indiana Register are distributed in CD-ROM format only. Both are also accessible at www.in.gov/legislative/ic_iac/.

The 2003 Edition of the Indiana Administrative Code and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

Introduction

JUDICIAL NOTICE AND CITATION FORM

IC 4-22-9 provides for the judicial notice of rules published in the Indiana Register or the Indiana Administrative Code. Subject to any errata notice that may affect a rule, the latest published version of a final rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by Indiana Administrative Code citation, regardless of whether it has been published in a supplement to the Indiana Administrative Code. For example, cite the entire current contents of title 312 as "Title 312 of the Indiana Administrative Code," cite the entire current contents of the third article in title 312 as "312 IAC 3," cite the entire current contents of the fourth rule in article three as "312 IAC 3-4," and cite part or all of the current contents of the second section in rule four as "312 IAC 3-4-2." IC 4-22-9-6 provides that a citation in this form contains later adopted amendments. Cite a noncodified rule provision by LSA document number, SECTION number, and Indiana Register citation to the page at which the cited text begins. If a reference to a particular version of a rule or a page in the Indiana Register is appropriate, cite the volume, page, and year of publication as "25 Ind. Reg. 120 (2002)." A shorter Indiana Register citation form is "25 IR 120."

PRINTING CODE

This style type is used to indicate that substantive text is being inserted by amendment into a rule, and ~~this style type~~ is used to indicate that substantive text is being eliminated by amendment from a rule. ~~This style type~~ is replaced by a single large "X" to show the elimination of a form or other piece of artwork. **This style type** is used to indicate a rule is being added. *This style type* and **this style type** also are used to highlight nonsubstantive annotations to a rule and to indicate that an entry in a reference table or the index concerns a final rule.

REFERENCE TABLES AND INDEX

The page location of rules and other documents printed in the Indiana Register may be found by using the tables and index published in the Indiana Register. A citation listing of the general and permanent rules affected in a volume and a cumulative index are published in each issue. Cumulative tables that cite executive orders, attorney general's opinions, and other nonrule policy documents printed in a calendar year are published quarterly.

FILING AND PUBLISHING SCHEDULE

NOTICE AND PUBLICATION SCHEDULE. The Legislative Services Agency publishes documents filed by 4:45 p.m. on the tenth day of a month (no later than the twelfth day of a month, excluding holidays or weekends) in the following month's Indiana Register according to the schedule below:

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
February 10, 2004	March 1, 2004	September 10, 2004	October 1, 2004
March 10, 2004	April 1, 2004	October 12, 2004	November 1, 2004
April 8, 2004	May 1, 2004	November 10, 2004	December 1, 2004
May 10, 2004	June 1, 2004	December 10, 2004	January 1, 2005
June 10, 2004	July 1, 2004	January 10, 2005	February 1, 2005
July 9, 2004	August 1, 2004	February 10, 2005	March 1, 2005
August 10, 2004	September 1, 2004	March 10, 2005	April 1, 2005

Documents will be accepted for filing on any business day from 8:00 a.m. to 4:45 p.m.

AROC NOTICES: Under IC 2-5-18-4, the Administrative Rules Oversight Committee is established to oversee the rules of any agency not listed in IC 4-21.5-2-4. As a result, certain notices to the AROC are required and are printed in the Indiana Register.

CORRECTIONS: IC 4-22-2-38 authorizes an agency to correct typographical, clerical, or spelling errors in a final rule without initiating a new rulemaking procedure. Correction notices are printed on errata pages in the Indiana Register.

EFFECTIVE DATE: IC 4-22-2-36 provides that, unless a later date is specified in the rule, a rule becomes effective thirty (30) days after filing with the Secretary of State.

EMERGENCY RULES: IC 4-22-2-37.1 provides summary rulemaking procedures for certain specified categories of rules.

INCORPORATION BY REFERENCE: IC 4-22-2-21 requires that a copy of matters that are incorporated by reference into a rule must be filed with the Attorney General, the Governor, and the Secretary of State along with the text of the incorporating final rule.

NONRULE POLICY DOCUMENTS: IC 4-22-7-7 requires that any nonrule document that interprets, supplements, or implements a statute and that the issuing agency may use in conducting its external affairs must be filed with the Legislative Services Agency and published in the Indiana Register.

NOTICE OF INTENT TO ADOPT A RULE: IC 4-22-2-23 requires an agency to publish a Notice of Intent to Adopt a Rule at least thirty (30) days before publication of the proposed rule.

PROMULGATION PERIOD: In order to be effective, the final version of an adopted rule must be approved by the Attorney General and the Governor within one (1) year after the date that the notice of intent is published. The final rule must then be filed with the Secretary of State.

PUBLIC HEARINGS: IC 4-22-2-24 requires that the public hearing on a proposed rule be scheduled at least twenty-one (21) days after a notice of the hearing is published in the Indiana Register and in a newspaper of general circulation in Marion County.

RULES READOPTION: IC 4-22-2.5 provides that a rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date.

State Agencies

ALPHABETICAL LIST

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†Aeronautics Commission of Indiana	110
†Aging and Community Services, Department on	450
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Agricultural Experiment Station	350
†Agriculture, Commissioner of	340
Agriculture, Commissioner of	375
†Air Pollution Control Board	325.1
Air Pollution Control Board	326
†Air Pollution Control Board of the State of Indiana	325
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Amusement Device Safety Board, Regulated	685
Animal Health, Indiana State Board of	345
Architects and Landscape Architects, Board of Registration for	804
Athletic Trainers Board, Indiana	898
Attorney General for the State, Office of	10
Auctioneer Commission, Indiana	812
Barber Examiners, Board of	816
Boiler and Pressure Vessel Rules Board	680
Boxing Commission, State	808
Budget Agency	85
Chemist of the State of Indiana, State	355
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Chiropractic Examiners, Board of	846
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†Clemency Commission, Indiana	230
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Deaf Board, Indiana School for the	514
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†Election Board, State	15
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Solid Waste Management Board	329
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†Textbook Adoptions, Commission on	520
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†Traffic Safety, Office of	150
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†Water Pollution Control Board	330.1
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†Agency's rules are repealed, transferred, or otherwise voided.

NUMERICAL LIST

TITLE NUMBER

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11 Consumer Protection Division of the Office of the Attorney General
†15 State Election Board
18 Indiana Election Commission
20 State Board of Accounts
25 Indiana Department of Administration
†30 State Personnel Board
31 State Personnel Department
33 State Employees' Appeals Commission
35 Board of Trustees of the Public Employees' Retirement Fund
40 State Ethics Commission
45 Department of State Revenue
50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
62 Office of the Public Access Counselor
65 State Lottery Commission
68 Indiana Gaming Commission
†70 Indiana Horse Racing Commission
71 Indiana Horse Racing Commission
75 Secretary of State
80 State Fair Commission
85 Budget Agency

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105 Indiana Department of Transportation
†110 Aeronautics Commission of Indiana
†120 Department of Highways
130 Indiana Port Commission
135 Indiana Transportation Finance Authority
140 Bureau of Motor Vehicles
145 Reciprocity Commission of Indiana
†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

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207 Coroners Training Board
210 Department of Correction
220 Parole Board
†230 Indiana Clemency Commission
240 State Police Department
250 Law Enforcement Training Board
260 State Department of Toxicology
270 Adjutant General
280 Public Safety Training Institute
290 State Emergency Management Agency

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307 Indiana Board of Registration for Soil Scientists
310 Department of Natural Resources
†311 State Soil and Water Conservation Committee
312 Natural Resources Commission
315 Office of Environmental Adjudication
†320 Indiana Environmental Management Board
†320.1 Solid Waste Management Board
323 Indiana Hazardous Waste Facility Site Approval Authority
†325 Air Pollution Control Board of the State of Indiana
†325.1 Air Pollution Control Board
326 Air Pollution Control Board
327 Water Pollution Control Board
328 Underground Storage Tank Financial Assurance Board
329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
†330.1 Water Pollution Control Board
†340 Commissioner of Agriculture
341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
350 Agricultural Experiment Station
355 State Chemist of the State of Indiana
357 Indiana Pesticide Review Board
360 State Seed Commissioner
365 Creamery Examining Board
370 State Egg Board
375 Commissioner of Agriculture

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407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
412 Indiana Health Facilities Council
414 Hospital Council
415 Commission on Forensic Sciences
430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
440 Division of Mental Health and Addiction
†450 Department on Aging and Community Services
460 Division of Disability, Aging, and Rehabilitative Services
470 Division of Family and Children
480 Violent Crime Compensation Division
490 Interdepartmental Board for the Coordination of Human Service Programs

TITLE NUMBER

EDUCATION AND LIBRARIES

†510 Commission on General Education
511 Indiana State Board of Education
514 Indiana School for the Deaf Board
515 Professional Standards Board
†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
575 State School Bus Committee
580 Indiana Medical and Nursing Distribution Loan Fund Board of Trustees
585 State Student Assistance Commission
590 Indiana Library and Historical Board
595 Library Certification Board

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615 Board of Safety Review
620 Occupational Safety Standards Commission
†630 Industrial Board of Indiana
631 Worker's Compensation Board of Indiana
†635 Wage Adjustment Board
†640 Indiana Unemployment Insurance Board
†645 Department of Employment and Training Services
646 Department of Workforce Development
650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
680 Boiler and Pressure Vessel Rules Board
685 Regulated Amusement Device Safety Board

BUSINESS, FINANCE, AND INSURANCE

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750 Department of Financial Institutions
760 Department of Insurance
762 Indiana Political Subdivision Risk Management Commission
770 Indiana Agricultural Development Corporation

OCCUPATIONS AND PROFESSIONS

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808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
880 Speech-Language Pathology and Audiology Board
884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

905 Alcohol and Tobacco Commission
910 Civil Rights Commission
915 Veterans' Affairs Commission
920 Indiana War Memorials Commission
925 Meridian Street Preservation Commission
930 Indiana Housing Finance Authority

†Agency's rules are repealed, transferred, or otherwise voided.

TITLE 52 INDIANA BOARD OF TAX REVIEW

LSA Document #03-179(F)

DIGEST

Adds 52 IAC 2 and 52 IAC 3 to establish standards to govern proceedings before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC 2
52 IAC 3

SECTION 1. 52 IAC 2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2. PROCEDURAL RULES

Rule 1. Purpose and Applicability

52 IAC 2-1-1 Purpose
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the board. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible. *(Indiana Board of Tax Review; 52 IAC 2-1-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-1-2 Applicability
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. Except as provided in 52 IAC 3 regarding the small claims procedures, the provisions of this article apply to and govern all proceedings before the board. *(Indiana Board of Tax Review; 52 IAC 2-1-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-1-3 Jurisdiction of the board
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. The board shall conduct an impartial review of an appeal from:

(1) a determination by an assessing official or a county property tax assessment board of appeals described under IC 6-1.5-4-1;

(2) a final determination of the department described under IC 6-1.5-5-1; or

(3) any other determination or finding by the department, a PTABOA, or an assessing official for which review by the board is expressly authorized under Indiana law.

(Indiana Board of Tax Review; 52 IAC 2-1-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)

Rule 2. Definitions

52 IAC 2-2-1 Applicability
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Board of Tax Review; 52 IAC 2-2-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-2 "Administrative law judge" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-3-3

Sec. 2. "Administrative law judge" refers to an individual appointed under IC 6-1.5-3-3 to conduct a hearing that the board is required by law to hold. *(Indiana Board of Tax Review; 52 IAC 2-2-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-3 "Appeal petition" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-3; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. "Appeal petition" means a petition for review filed with the board under IC 6-1.5-4-1 or IC 6-1.5-5-1. *(Indiana Board of Tax Review; 52 IAC 2-2-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-4 "Authorized representative" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. "Authorized representative" means a person, including, but not limited to, a tax representative as defined in 52 IAC 1-1-6, authorized to represent a party in a matter governed by this article. *(Indiana Board of Tax Review; 52 IAC 2-2-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-5 "Board" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-1-3

Sec. 5. "Board" means the Indiana board of tax review established under IC 6-1.5-1-3. *(Indiana Board of Tax Review; 52 IAC 2-2-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-6 "Board member" or "member of the board" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-2-1

Sec. 6. "Board member" or "member of the board" means one (1) of the three (3) members of the board appointed under IC 6-1.5-2-1. *(Indiana Board of Tax Review; 52 IAC 2-2-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-7 "Central office" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. "Central office" means the principal office of the board located in Indianapolis, Indiana. *(Indiana Board of Tax Review; 52 IAC 2-2-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

52 IAC 2-2-8 "Department" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.1-30-1.1

Sec. 8. "Department" means the department of local government finance established under IC 6-1.1-30-1.1. *(Indiana Board of Tax Review; 52 IAC 2-2-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-9 "Final order" or "final determination" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 9. "Final order" or "final determination" means any action of the board that is:
(1) designated as final by the board;
(2) the final step in the administrative process before resort may be made to the judiciary; or
(3) deemed final under IC 6-1.1-15-4 and IC 6-1.1-15-5.
(Indiana Board of Tax Review; 52 IAC 2-2-9; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)

52 IAC 2-2-10 "Nonfinal order" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 10. "Nonfinal order" means any action by the board that is not a final order or final determination subject to direct judicial review. *(Indiana Board of Tax Review; 52 IAC 2-2-10; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-11 "Order or ruling" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 11. "Order or ruling" means any final or nonfinal order, ruling, or determination by the board. *(Indiana Board of Tax Review; 52 IAC 2-2-11; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-12 "Original determination" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 12. "Original determination" means a determination of assessed value, qualification for an exemption, credit, or deduction, or other decision that is the subject of the appeal petition. *(Indiana Board of Tax Review; 52 IAC 2-2-12; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-13 "Party" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 13. "Party" means a participant in a matter governed by this article, which may include the following:
(1) The owner of the subject property.
(2) The taxpayer responsible for the property taxes payable on the subject property.
(3) The person filing an appeal petition.
(4) The township assessor, county assessor, or PTABOA that made the original determination under appeal.
(5) A PTABOA that made a determination on an exemption application under appeal.
(6) A county auditor or other local official or body who made the original determination concerning a property tax deduction, credit, or refund.
(7) The department.
(Indiana Board of Tax Review; 52 IAC 2-2-13; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)

52 IAC 2-2-14 "Person" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-1-10; IC 6-1.1-15

Sec. 14. "Person" has the meaning set forth in IC 6-1.1-1-10. *(Indiana Board of Tax Review; 52 IAC 2-2-14; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-15 "Petition for rehearing" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 15. "Petition for rehearing" means a written request for rehearing properly filed with the board under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-2-15; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-16 "Practice before the board" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 16. "Practice before the board" means participation in any matters connected with a proceeding before the board, any of its members, or any contractor or employee designated to act in the capacity of an administrative law judge relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules. Such presentations include, but are not limited to, the following:
(1) Preparing and filing necessary documents except personal property returns.
(2) Corresponding and communicating with the board on a substantive issue in a pending proceeding.
(3) Representing a client at a hearing, on-site inspection, or meeting.
(Indiana Board of Tax Review; 52 IAC 2-2-16; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)

52 IAC 2-2-17 "Property tax assessment board of appeals" or "PTABOA" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.1-28-1

Sec. 17. "Property tax assessment board of appeals" or "PTABOA" means the county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Indiana Board of Tax Review; 52 IAC 2-2-17; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

52 IAC 2-2-18 "Tax representative" defined
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 18. "Tax representative" has the meaning set forth in 52 IAC 1-1-6. *(Indiana Board of Tax Review; 52 IAC 2-2-18; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

Rule 3. Computation of Time and Service

52 IAC 2-3-1 Determination of designated periods of time and filing dates
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) This section applies to the computation of any period of time prescribed or allowed by this article or by order of the board.

(b) The day of the act, event, or default from which the designated period of time begins is not counted. The last day of the designated period is counted but may not be a:
(1) Saturday;
(2) Sunday;
(3) legal holiday as defined by state statute; or
(4) day the office in which the act is to be done is closed during regular business hours.

(c) The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by United States first class mail, registered mail, or certified mail, will constitute prima facie proof of the date of filing.

(d) The date-received stamp affixed by the proper county official or the board to an appeal petition or a petition for rehearing filed by personal delivery or private courier will constitute prima facie proof of the date of filing.

(e) If a paper is served through the United States mail, three (3) days must be added to a period that commences upon service of that paper. *(Indiana Board of Tax Review; 52 IAC 2-3-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

52 IAC 2-3-2 Notice of appearance; power of attorney
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) If the party is represented by a tax representative, the tax representative must file a power of attorney with the board.

(b) Other authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party's behalf.

(c) The power of attorney or notice of appearance must contain the authorized representative's name, address, and telephone number. *(Indiana Board of Tax Review; 52 IAC 2-3-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

52 IAC 2-3-3 Service by the board
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. (a) This section applies to the service of:
(1) notices required by the board under IC 6-1.1-15-4 and IC 6-1.1-15-5; and
(2) any other ruling, order, determination, or paper issued by the board.

(b) The board will keep a record of all notices, rulings, determinations, or other papers, served by personal delivery, private courier, or United States mail, indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) The board may serve papers by facsimile unless, in writing, a party specifically requests otherwise.

(d) Service shall be given to each party unless the party has properly designated an authorized representative and that representative has filed a power of attorney or notice of appearance as required under section 2 of this rule, in which case service shall be given to the party's authorized representative.

(e) Service to a person that is not an individual must be made to the party's authorized representative in accordance with:
(1) the power of attorney attached to the appeal petition;
(2) any superceding power of attorney filed with the board; or
(3) any notice of appearance filed by an attorney or by other authorized representative.

(f) The taxpayer, or the taxpayer's authorized representative, must provide written notification to the board of any change of address or facsimile number. Unless this written notification is provided, service will be deemed accomplished when mailed or faxed according to the last known address or facsimile number properly provided to the board. *(Indiana Board of Tax Review; 52 IAC 2-3-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

52 IAC 2-3-4 Service to all parties required
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) All documents and other papers that are filed with

or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.

(b) Service of papers other than appeal petitions and petitions for rehearing may be made by electronic mail or facsimile unless, in writing, a party specifically requests otherwise. *(Indiana Board of Tax Review; 52 IAC 2-3-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

Rule 4. Filing Appeal Petitions and Petitions for Rehearing

52 IAC 2-4-1 Filing of appeal petitions; petitions for rehearing

Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) The filing of appeal petitions and petitions for rehearing must be made by:
(1) personal delivery;
(2) deposit in the United States mail;
(3) private courier; or
(4) registered or certified mail, return receipt requested.

(b) Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail. *(Indiana Board of Tax Review; 52 IAC 2-4-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779)*

52 IAC 2-4-2 Time and place for filing appeal petitions

Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-11-7; IC 6-1.1-15-3; IC 6-1.1-15-12; IC 6-1.5-5-1

Sec. 2. (a) A petition for review of assessment under IC 6-1.1-15-3 must be filed with the county assessor within thirty (30) days after the notice of the determination by the PTABOA. The county assessor shall forward a copy of the petition to the township assessor responsible for the original assessment.

(b) A petition to correct errors under IC 6-1.1-15-12 must be filed with the county auditor within thirty (30) days after notice of the determination of the PTABOA. The county auditor shall forward a copy of the petition to the township assessor responsible for the original assessment.

(c) A petition for review of exemption under IC 6-1.1-11-7 must be filed with the county assessor within thirty (30) days after notice of the determination of the PTABOA.

(d) A petition for review of an action by the department under IC 6-1.5-5-1 must be filed with the board within forty-five (45) days after notice of the determination of the department, unless otherwise specified by statute.

(e) There is a rebuttable presumption that the notice of determination is mailed on the date of the notice. *(Indiana Board of Tax Review; 52 IAC 2-4-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779)*

52 IAC 2-4-3 Time and place for filing petitions for rehearing

Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. Persons filing a petition for rehearing under IC 6-1.1-15-5 must file the petition with the board within fifteen (15) days after the board gives notice of its final determination under IC 6-1.1-15-4. *(Indiana Board of Tax Review; 52 IAC 2-4-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779)*

Rule 5. Compliant Appeal Petitions and Scope of Review

52 IAC 2-5-1 Compliant appeal petition

Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-1; IC 6-1.1-15-3; IC 6-1.1-15-4

Sec. 1. (a) Appeal petitions must be submitted on the form prescribed by the board and in conformance with the instructions provided on the petition.

(b) A separate petition must be filed for each parcel.

(c) The petition shall include the following:
(1) Information required by IC 6-1.1-15-1(e).
(2) Legal and factual basis of the appeal.
(3) Assessment of the subject property that the petitioner alleges is correct.
(4) Assessed value placed on the subject property in the original determination or, if different, the assessed value placed on the property by the PTABOA.
(5) All information requested on the petition form.
(6) An election to either have the appeal petition heard pursuant to the small claims procedures (52 IAC 3) or to have the appeal petition heard pursuant to this article.

(d) If the appeal petition is not properly completed, the board will issue a notice of defect, specifying the nature of the defect and shall return the appeal petition to the petitioner. The petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect is served.

(e) Failure to bring the appeal petition into substantial compliance with the instructions in the defect notice will result in denial of the petition without hearing. *(Indiana Board of Tax Review; 52 IAC 2-5-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779)*

52 IAC 2-5-2 Amendments to appeal petitions; additional written specification

Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Timely filed amendments to appeal petitions are permitted.

(b) The petition may be amended once as a matter of course within thirty (30) days of the filing of the original appeal petition.

(c) Amendments filed later than thirty (30) days following the filing of the petition must be approved by the board for good cause shown. Amendments filed solely for the purpose of adding new issues will be approved if filed no later than fifteen (15) days prior to the hearing.

(d) Notwithstanding subsection (b), the board will not approve an amendment filed within fifteen (15) days prior to the hearing without the consent of the other parties to the hearing.

(e) Amendments to appeal petitions must be filed at the central office and must be served upon all parties.

(f) Amendments to appeal petitions must be filed pursuant to 52 IAC 2-4.

(g) Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing. *(Indiana Board of Tax Review; 52 IAC 2-5-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779)*

52 IAC 2-5-3 Limitation of issues
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) The board may not limit the scope of the issues raised in the appeal petition to those presented to the PTABOA unless all parties agree to the limitation of issues.

(b) If new issues are raised in an amendment to the appeals petition, the amendment is subject to the terms of section 2 of this rule.

(c) If an issue not presented to the PTABOA is raised in the appeal petition or the amended appeal petition, the board may remand the petition to the PTABOA for consideration of the new issue if consented to by the parties and the PTABOA.

(d) If the board remands the petition to the PTABOA pursuant to subsection (c) and the PTABOA does not issue a determination on the new issue within sixty (60) days of the remand, the board shall proceed to hear the appeal. *(Indiana Board of Tax Review; 52 IAC 2-5-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780)*

Rule 6. Hearing Procedures

52 IAC 2-6-1 Hearing date
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.5-5-6

Sec. 1. The board shall conduct a hearing within the time limits set forth in IC 6-1.1-15-4 and IC 6-1.5-5-6. *(Indiana Board of Tax Review; 52 IAC 2-6-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780)*

52 IAC 2-6-2 Place of hearing
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Hearings held before an administrative law judge shall be held in the county in which the property subject to the appeal is located, in an adjacent county, or at such other location as the parties and the designated administrative law judge agree.

(b) All hearings conducted by a member of the board or by the board sitting in its entirety will be held in the central office unless otherwise agreed to by the board. *(Indiana Board of Tax Review; 52 IAC 2-6-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780)*

52 IAC 2-6-3 Expedited hearing procedures
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) The board may receive evidence by duly sworn affidavit. However, evidence presented by affidavit may be subject to objection.

(b) The board may issue a determination based upon a record created by stipulation of the parties as to some or all of the issues on appeal.

(c) A hearing or prehearing conference may be conducted by telephone or through video conferencing upon agreement of the parties. *(Indiana Board of Tax Review; 52 IAC 2-6-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780)*

52 IAC 2-6-4 Issuance of final determination
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5; IC 6-1.5-5-6

Sec. 4. (a) The board shall make a final determination within the time limits set forth in IC 6-1.1-15-4 and IC 6-1.5-5-6.

(b) The board may, on its own motion and upon written notification, extend the final determination date under subsection (a) by up to one hundred eighty (180) days.

(c) If the board does not issue a final determination within the maximum time allowed by this section, the petitioner may take action as set forth in IC 6-1.1-15-5 and IC 6-1.5-5-6.

(d) Upon issuance of the final determination, or if the maximum time has elapsed as set forth in IC 6-1.1-15-5 or IC 6-1.5-5-6, a party may seek judicial review under IC 6-1.1-15-5.

(e) A final determination requires the approval by a majority of the board. If a majority of the board is not able to arrive at a final determination, the petition shall be deemed denied and the parties will be so notified. *(Indiana Board of Tax Review; 52 IAC 2-6-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780)*

52 IAC 2-6-5 Hearing formality; transcription services
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) Hearings will be conducted by an administrative law judge, any member of the board acting as an administrative law judge, or the board sitting in its entirety.

(b) Hearings shall be informal proceedings.

(c) All testimony shall be under oath or affirmation.

(d) Hearings will be tape recorded by the administrative law judge. The recording of the administrative law judge will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript to the board at no cost to the board.

(e) The administrative law judge may rule on any nonfinal order without the approval of a majority of the board. *(Indiana Board of Tax Review; 52 IAC 2-6-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781)*

52 IAC 2-6-6 County assessor as an additional party
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. (a) The county assessor in the county where the property is located may:
(1) appear as an additional party in a proceeding before the board; or
(2) file an objection to a settlement or stipulation of assessed value or exempt status.

(b) In order to appear as an additional party or to object to settlement or stipulation of value or exempt status, the county assessor must do the following:
(1) Notify the parties and the board in writing.
(2) Include a detailed statement of the reason for the appearance or objection.
(3) File the notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation.

(c) If a county assessor does not appear as an additional party in a case, but files an objection to a settlement or stipulation of assessed value or exempt status, the parties in the case may submit a written response to the objection within ten (10) days. The board may either accept or reject the objection or may accept the objection in part and reject it in part. *(Indiana Board of Tax Review; 52 IAC 2-6-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781)*

52 IAC 2-6-7 Consolidation order
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. (a) The board may, on its own motion or upon motion by one (1) or more parties, consolidate two (2) or more petitions for the appeal of an assessment of real property if:
(1) the properties are located in the same township and are of the same classification; and
(2) the common factual and legal issues in dispute predominate over the individual issues.

(b) The board shall notify the parties of its intent to consolidate the actions and shall permit a petitioner, as a matter of right, to sever itself from the consolidated action.

(c) A motion to sever under subsection (b) must be in writing. *(Indiana Board of Tax Review; 52 IAC 2-6-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781)*

52 IAC 2-6-8 Summary judgment; partial summary judgment
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. A party may, prior to the hearing, move for summary judgment or partial summary judgment. *(Indiana Board of Tax Review; 52 IAC 2-6-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781)*

Rule 7. Evidentiary Procedures

52 IAC 2-7-1 Evidence
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) Except as provided in subsection (b), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.

(b) A party to the appeal must provide to the other parties:
(1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) business days prior to the hearing; and
(2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days prior to the

hearing. If a new issue has been added by another party pursuant to 52 IAC 2-5-2(c), a party may supplement its list of witnesses and exhibits ten (10) days prior to the hearing in order to address the new issue.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the United States mail or other courier service three (3) days prior to the deadline in accordance with provisions of 52 IAC 2-3-1. If a party uses a courier service that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

(d) The board or the presiding administrative law judge may waive the deadlines under subsection (b) for any materials that had been submitted at or made part of the record at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

(e) Copies of all materials provided to other parties under subsection (b) will become part of the administrative record only if admitted into evidence by the board or administrative law judge.

(f) Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.

(g) Materials submitted to or made a part of the record at a PTABOA hearing, department hearing, or other proceeding from which the appeal arises will not be made part of the record of the board proceeding unless submitted to the board. Evidentiary materials proffered but not admitted into evidence will be so identified in the record.

(h) The board and its administrative law judges may specify the manner in which exhibits are to be labeled and organized.

(i) The board shall consider only the evidence, exhibits, and briefs submitted to it, other documents made part of the record, and matters of which the board expressly takes official notice under 52 IAC 2-7-4. *(Indiana Board of Tax Review; 52 IAC 2-7-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781)*

52 IAC 2-7-2 Admissibility; relevancy; weight
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) A party may object to the admissibility of evidence during the hearing. The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the rules of evidence. The administrative law judge may defer a ruling on the admissibility of the evidence for the board's decision. If the administrative law judge defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the board and addressed in the findings.

(b) The board will determine the relevance and weight to be assigned to the evidence. Although evidence may be admitted over the objection of a party, if it is immaterial, irrelevant, or should be excluded or disregarded on other grounds, it will not be assigned any weight in the board's final determination. *(Indiana Board of Tax Review; 52 IAC 2-7-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782)*

52 IAC 2-7-3 Hearsay evidence
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence. *(Indiana Board of Tax Review; 52 IAC 2-7-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782)*

52 IAC 2-7-4 Official notice
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) The board may take official notice of the following:
(1) Any fact that could be judicially noticed in the courts.
(2) The record of other proceedings before the board.
(3) Codes or standards that have been adopted by an agency of the United States or this state. and
(4) Publications, treatises, or other documents commonly considered to be reliable authorities on subjects addressed at the hearing.

(b) Parties must be:
(1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (a), of the specific facts or material noticed, including any staff memoranda and data; and
(2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (a).
(Indiana Board of Tax Review; 52 IAC 2-7-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782)

52 IAC 2-7-5 Confidential information
Authority: IC 6-1.5-6-2
Affected: IC 5-14-3-1; IC 6-1.1-15; IC 6-1.1-35-9

Sec. 5. (a) A party must, at the time it is submitted, clearly identify all confidential information provided to the

board and specify the statutory basis under which the information is claimed to be confidential.

(b) The board shall make a finding on the confidentiality of information upon the motion of the party and submission of such information.

(c) Information deemed confidential by the board shall be so identified by the board and shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1, et seq., and other applicable law.

(d) A redacted version of a document containing both confidential and nonconfidential evidence shall be provided to the board by the party requesting confidential treatment. The redacted version of the document will be available to the public under IC 5-14-3. *(Indiana Board of Tax Review; 52 IAC 2-7-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782)*

Rule 8. Prehearing and Posthearing Activities

52 IAC 2-8-1 Continuance of proceedings
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) Continuances and extensions of time may be granted only if:
(1) the request is made prior to the hearing or other deadline;
(2) good cause is shown; and
(3) the request is served on all parties.

(b) A continuance or extension granted prior to the hearing shall be considered a delay reasonably caused by the party requesting the continuance or extension and shall automatically extend the time during which the hearing must be held. *(Indiana Board of Tax Review; 52 IAC 2-8-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1783)*

52 IAC 2-8-2 Prehearing conference
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) The board may, upon reasonable notice to the parties, order a prehearing conference. A prehearing conference order may include a requirement for the parties to confer and submit an appeal management plan addressing matters outlined in subsection (b).

(b) The board may, through the prehearing conference or appeal management plan, require the parties to submit:
(1) a list of two (2) or more desired dates for the hearing;
(2) a preliminary statement of all contentions and defenses;
(3) a discovery and motion schedule;
(4) a preliminary witness and exhibit list;
(5) possible stipulations;
(6) amendments to the appeal petition;
(7) an outline or summary of the matter under appeal; or
(8) any other information that the board deems beneficial to the orderly review of an appeal petition.

(c) The parties, subject to an order issued under subsection (a), must demonstrate a good faith effort to comply with the order and reach agreement on an appeal management plan and the matters specified in the order. If the parties fail to materially comply with the order, or do not demonstrate a good faith effort, the board or the designated administrative law judge may:
(1) conduct the prehearing conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the prehearing conference; or
(2) issue an order addressing any matter not adequately resolved.
(Indiana Board of Tax Review; 52 IAC 2-8-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1783)

52 IAC 2-8-3 Discovery
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) A party may use the applicable discovery methods contained in the Indiana Rules of Trial Procedure.

(b) The parties shall make all reasonable efforts to resolve discovery disputes before seeking a discovery order from the board.

(c) Upon showing of good cause, including a description of independent efforts made to resolve the discovery dispute, the board may issue a discovery order consistent with subsection (a). If necessary, the enforcement of such order or right of discovery shall be in accordance with the Indiana Rules of Trial Procedure.

(d) A party seeking a discovery order under this section shall notify all parties.

(e) A party may seek discovery of witnesses, exhibits, or other evidence that the other party intends to present at the hearing. However, a party may not be precluded from supplementing the evidence and witness summaries required by 52 IAC 2-7-1(b)(1) or adding to the witness and exhibit lists required by 52 IAC 2-7-1(b)(2) because such items were not identified in discovery.

(f) No party shall serve on any other party more than twenty-five (25) interrogatories or more than twenty-five (25) requests for admission, including subparagraphs and subparts, without leave of the board.

(g) Upon motion of a party and for good cause shown, the board may issue a protective order restricting discovery of

a trade secret or other confidential information or other matter consistent with the Indiana Rules of Trial Procedure and this article.

(h) Depositions may be taken in accordance with the Indiana Rules of Trial Procedure.

(i) Any member of the board or the administrative law judge assigned to hear the petition may issue a nonfinal order with respect to a discovery motion, motion to compel, motion for protective order, or other motion related to discovery or procedure. *(Indiana Board of Tax Review; 52 IAC 2-8-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1783)*

52 IAC 2-8-4 Subpoena
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) Any party may request that the board issue a subpoena or subpoena duces tecum by filing a request with the board at least ten (10) business days before the date on which the hearing commences or the deposition is scheduled. The request shall state the following information:
(1) The name of the witness.
(2) The address, including street address, city, and county, where the witness can be served.
(3) The date, time, and location the witness is expected to appear.
(4) The matter in which the witness is expected to testify.
(5) If a subpoena duces tecum, the material, listed in detail, to be brought by the witness to the hearing or deposition.

(b) A request for a subpoena or subpoena duces tecum shall not be granted by the board if filed fewer than ten (10) business days before the date on which the hearing commences or the deposition is scheduled except by approval of the board upon a showing of good cause.

(c) Except as provided in subsection (b), upon receipt of a properly filed request, the appropriate subpoena shall be issued by any member of the board.

(d) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas shall be enforced in a court of competent jurisdiction as provided for by law. *(Indiana Board of Tax Review; 52 IAC 2-8-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784)*

52 IAC 2-8-5 Motions
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) A party may file motions with the board or the designated administrative law judge. Except motions made during the hearing, all motions must:
(1) be in writing;
(2) state the basis for the motion;
(3) set forth the relief or order sought;
(4) be properly captioned with the petition number, parcel number, and taxpayer's name, address, and telephone number;
(5) be signed by the party or authorized representative; and
(6) include verification or proof of service to all parties.

(b) The failure to serve all parties may result in a denial of the motion.

(c) Any response to a motion must be filed within ten (10) days after the date of service unless otherwise specified by the board or the administrative law judge. *(Indiana Board of Tax Review; 52 IAC 2-8-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784)*

52 IAC 2-8-6 Briefs
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. (a) Parties may file, or the board may request, briefs in support of a party's position on any issue relevant to the appeal.

(b) Briefs shall be filed within the time limits set by the administrative law judge or board. An extension of time may be requested. If a party fails to timely file a brief, the board may exclude the brief from consideration.

(c) An original and two (2) copies of a brief submitted under this section must be filed with the board at the central office. A copy of the brief shall also be served on each party.

(d) A brief submitted under this section must not exceed thirty (30) pages (excluding exhibits) without prior written permission of the board or administrative law judge.

(e) Notwithstanding a submission deadline, a party may supplement a previously filed brief with subsequently decided cases, but without further argument.

(f) Briefs amicus curiae may be filed with leave of the board and must be filed in accordance with the briefing schedule established for the parties or by order of the board or the designated administrative law judge. *(Indiana Board of Tax Review; 52 IAC 2-8-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784)*

52 IAC 2-8-7 Submission of proposed findings and conclusions
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. (a) Parties may file proposed findings of fact and conclusions of law with the board.

(b) Proposed findings and conclusions must be filed within the time period established and at the address designated by the board or administrative law judge. A copy must be served on each party. *(Indiana Board of Tax Review; 52 IAC 2-8-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784)*

52 IAC 2-8-8 Posthearing evidence
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. (a) No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board. The administrative law judge will set a deadline for the submission of any requested evidence and specify the address to which the posthearing evidence must be submitted.

(b) An extension of time to submit posthearing evidence may be requested if submitted in writing to the administrative law judge. An extension may be granted if timely made and good cause is shown. If posthearing evidence is untimely submitted, the board will proceed to determine the appeal petition without considering the untimely submitted posthearing evidence.

(c) Posthearing evidence submitted must be served on all parties. *(Indiana Board of Tax Review; 52 IAC 2-8-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

Rule 9. Orders and Determinations

52 IAC 2-9-1 Orders and determinations
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. All parties will be notified of all orders or determinations issued by the board. *(Indiana Board of Tax Review; 52 IAC 2-9-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

52 IAC 2-9-2 Final order
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 2. (a) Final orders and final determinations shall:
(1) contain the name of petitioner and identify the property that is the subject of the appeal;
(2) identify the parties and representatives participating in the proceeding;
(3) include a concise statement of the basic facts of record;
(4) contain separately stated findings of fact;
(5) contain a decision disposing of all contested issues; and
(6) include a notice of appeal rights.

(b) Findings must be based exclusively on the evidence in the record and on matters officially noticed in the proceeding.

(c) A final order is subject to judicial review under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-9-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

52 IAC 2-9-3 Corrected or amended final order
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) The board may issue a corrected final order to correct an oversight, error, or omission in the original final determination within the earlier of:
(1) forty-five (45) days of issuing the final order; or
(2) the date a verified petition for judicial review of the final determination is filed with the Indiana tax court.

(b) A corrected or amended final order shall be treated as the final order or determination on the appeal petition, and the parties shall have forty-five (45) days from the date the amended or corrected final order is issued to seek judicial review. *(Indiana Board of Tax Review; 52 IAC 2-9-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

52 IAC 2-9-4 Settlement; stipulation of value
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-4

Sec. 4. (a) All stipulations submitted by the parties concerning the value or status of the property must be approved by the board.

(b) If the stipulation concerns property originally assessed by or under the authority of a township assessor, the petitioner must notify the county assessor, in the county in which the property is located, of the proposed stipulation at the time the stipulation is filed with the board.

(c) If the county assessor wishes the board to consider the county assessor's objections to the stipulation, the county assessor must file a written objection to the stipulation within ten (10) days of the date the stipulation is filed with the board.

(d) If the board does not approve a stipulation, the appeal shall proceed according to IC 6-1.1-15-4 and this article.

(e) This section shall not apply to the stipulation or settlement of matters remanded to the board from the Indiana tax court. *(Indiana Board of Tax Review; 52 IAC 2-9-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

Rule 10. Sanctions

52 IAC 2-10-1 Failure to appear
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) The failure to appear at a hearing, after proper notice has been given, may constitute the basis for a default or dismissal of the appeal petition.

(b) Within ten (10) days after the order of default or dismissal is issued, the party against whom the order is entered may file a written objection requesting that the order be vacated and set aside. This objection must contain supportive facts stating why the party did not appear.

(c) The board may vacate and set aside an entry of a dismissal or default order.

(d) If an order of default or dismissal is vacated and set aside, the board will schedule another hearing on the appeal petition. At least thirty (30) days' notice will be given for the hearing unless waived by agreement of all parties. The time period within which the board must issue a final determination on the appeal petition will be calculated from the date of the hearing on the merits. *(Indiana Board of Tax Review; 52 IAC 2-10-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)*

52 IAC 2-10-2 Default or dismissal
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 2. (a) The board may issue an order of default or dismissal as the result of:
(1) failure of the petitioner to state a claim on which relief can be granted;
(2) failure of a party to comply with a rule or order of the board or administrative law judge;
(3) disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
(4) failure of a party to provide or exchange evidence in accordance with this article.

(b) The board may issue an order of default or dismissal on motion of a party or on its own motion.

(c) A dismissal or default under this section is a final determination and may be appealed to tax court in accordance with the provisions of IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-10-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786)*

52 IAC 2-10-3 Ex parte communications prohibited
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) Parties, their authorized representatives, or anyone acting on their behalf are prohibited from engaging in ex parte communications with the administrative law judge or the board regarding any substantive matters relating to the appeal petition while the administrative appeals process is ongoing.

(b) Ex parte communications may be grounds for sanctions, including, but not limited to, dismissal of the appeal.

(c) Communications:
(1) regarding matters of practice and procedure;
(2) that do not pertain to the merits of the appeal; or
(3) to which the opposing party or parties have given consent;
are not considered ex parte communications under this section. *(Indiana Board of Tax Review; 52 IAC 2-10-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786)*

Rule 11. Mediation and Dispute Resolution

52 IAC 2-11-1 Mediation and alternative dispute resolution
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. Any appeal to the board may, with the consent of the parties, be resolved by mediation or other alternate dispute resolution procedures. *(Indiana Board of Tax Review; 52 IAC 2-11-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786)*

52 IAC 2-11-2 Arbitration
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) An appeal may, with the consent of the parties, be resolved by arbitration. Requests for diversion of an appeal to arbitration may be made by any party, or the board may recommend that the matter be arbitrated.

(b) The arbitration may be conducted by a licensed real estate appraiser or other qualified person who shall do the following:
(1) Inspect the subject property.
(2) Prepare a report that includes the arbitrator's recommendation on the value of the property.
(3) Submit the report to the parties and the board.

(c) The board shall accept the arbitrator's recommendation if:
(1) the parties have agreed, in writing, to be bound by the arbitrator's recommendation; and
(2) the recommendation is not:
(A) arbitrary;
(B) capricious;
(C) an abuse of discretion; or
(D) contrary to law.

(d) The costs of arbitration may be paid by the board if the arbitrator is selected by the parties from a panel of arbitrators approved by the board in accord with the process described in subsection (e).

(e) The selection process shall be conducted as follows:

(1) The board shall present the parties with a panel of three (3) arbitrators.
(2) The respondent, or co-respondents acting jointly, shall strike one (1) name from the panel.
(3) The petitioner, or co-petitioners acting jointly, shall strike one (1) name from the panel.
(4) The remaining arbitrator shall conduct the arbitration.
(Indiana Board of Tax Review; 52 IAC 2-11-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786)

Rule 12. Miscellaneous Provisions

52 IAC 2-12-1 Supersedes conflicting rules
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The provisions of this article shall supersede 50 IAC 17. *(Indiana Board of Tax Review; 52 IAC 2-12-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787)*

SECTION 2. 52 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. SMALL CLAIMS PROCEDURES

Rule 1. Small Claims Procedures

52 IAC 3-1-1 Applicability
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) This article governs the practice and procedure in all small claims. The provisions of 52 IAC 2 apply to the small claims procedures unless inconsistent with this article.

(b) The purpose of this article *[sic., is]* **to make the administration of small claims more efficient, informal, simple, and expeditious than those administered under 52 IAC 2.** *(Indiana Board of Tax Review; 52 IAC 3-1-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787)*

52 IAC 3-1-2 Property subject to the small claims procedure
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Unless a party elects to transfer out under 52 IAC 2-5-1(b)(6) *[sic.]* **or 52 IAC 3-1-3** *[section 3 of this rule]***, an appeal petition shall be subject to the small claims procedure if the property under appeal is:**
(1) an unimproved parcel of land with an assessed value not in excess of one million dollars ($1,000,000);
(2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one millions *[sic.]* **dollars ($1,000,000); or**
(3) personal property not in excess of one million dollars ($1,000,000).

(b) By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board.

(c) The small claims appeal petition may not be amended except to conform the issues raised in the appeal petition to those issues raised at the PTABOA hearing from which the appeal arises.

(d) A party to any appeal concerning a property that does not meet the criteria described in subsection (a) may elect to have the petition heard pursuant to the small claims procedure by:
(1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and
(2) obtaining the written consent to such election from the other parties to the proceeding.
(Indiana Board of Tax Review; 52 IAC 3-1-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787)

52 IAC 3-1-3 Transfer
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) A party who does not wish his or her matter to be heard pursuant to the small claims procedure may request a transfer for the proceeding from the small claims procedure to the standard hearing procedure governed by 52 IAC 2.

(b) The request for transfer shall be made by:
(1) opting out of the small claims procedure on the appeal petition; or
(2) written notice to the board no later than fifteen (15) days prior to the date of the small claims hearing.

(c) The time for hearing the matter pursuant to the standard board procedure described under 52 IAC 2 shall begin to run from the date the request for transfer is received by the board. *(Indiana Board of Tax Review; 52 IAC 3-1-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787)*

52 IAC 3-1-4 Representation
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) A party may appear on his or her own behalf, by any representative expressly authorized by the party, in writing, to appear on the party's behalf, or by an attorney who has complied with the notice of appearance requirements of 52 IAC 2-3-2.

(b) The rules concerning tax representatives under 52 IAC 1 apply to the small claims procedure. *(Indiana Board*

of Tax Review; 52 IAC 3-1-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787)

52 IAC 3-1-5 Informality of proceeding
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) The small claims procedures shall be informal with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law. Small claims procedures are not bound by the rules of trial practice, procedure, or evidence except provisions relating to privileged communications and offers of settlement. This relaxation of evidentiary rules is not a relaxation of the burden of proof.

(b) Hearsay evidence may be considered if not objected to, but the determination may not be based solely upon the hearsay evidence.

(c) Except as provided in subsection (f), there shall be no prehearing discovery in small claims.

(d) No prehearing conferences will be held in small claims.

(e) No posthearing submissions will be allowed or accepted in small claims.

(f) The parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.

(g) At the commencement of the small claims hearing, the parties shall make available to the presiding administrative law judge a copy of all documentary evidence provided to the other parties.

(h) Failure to comply with subsection (f) may serve as grounds to exclude evidence or testimony that has not been timely provided. *(Indiana Board of Tax Review; 52 IAC 3-1-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

52 IAC 3-1-6 Waiver of hearing
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. The parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties. *(Indiana Board of Tax Review; 52 IAC 3-1-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

52 IAC 3-1-7 Continuance of the hearing
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances. *(Indiana Board of Tax Review; 52 IAC 3-1-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

52 IAC 3-1-8 Hearing presentation time restrictions
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. (a) Each party will be restricted in the amount of time they will be allowed to present their case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure, but have a substantial amount of written and documentary evidence or numerous witnesses, must be prepared to present their case within the time restrictions. It is the responsibility of the parties to organize their presentation such that the oral presentation references the supporting written and documentary evidence sufficient for the administrative law judge and board to make the desired connections between the oral testimony and any more detailed supporting evidence. Exhibit lists, evidentiary outlines, affidavits, summaries, and other such tools should be utilized if necessary for the party to present their case within the time restrictions.

(c) If a party cannot adequately present its case within the time restrictions, it is the duty of that party to request in writing that the matter be removed from the small claims docket and scheduled to be heard pursuant *[sic.]* **under 52 IAC 2. Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances.** *(Indiana Board of Tax Review; 52 IAC 3-1-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

52 IAC 3-1-9 Record of proceedings
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 9. Small claims hearings shall be recorded with a recording device. *(Indiana Board of Tax Review; 52 IAC 3-1-9; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

52 IAC 3-1-10 Final determination and judicial review
Authority: IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 10. (a) The administrative law judge shall prepare a recommendation after the conclusion of the hearing.

(b) The board shall review the recommendation of the administrative law judge.

(c) The board shall accept, reject, or modify the recommendation and issue a final determination.

(d) The final determination shall be in writing and is

subject to judicial review under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 3-1-10; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788)*

LSA Document #03-179(F)
Notice of Intent Published: 26 IR 3674
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Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-149(F)

DIGEST

Amends 312 IAC 9-10-4, governing game breeder licenses, to indicate which species can be kept under a game breeder license, to regulate the importation of a wild animal, to require documentation when transporting wild animals, to restrict the release of wild animals held under this license, to require compliance with other applicable state, local, and federal laws, and to identify causes for which a license can be suspended or revoked. Effective 30 days after filing with the secretary of state.

312 IAC 9-10-4

SECTION 1. 312 IAC 9-10-4, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-4 Game breeder licenses
Authority: IC 14-22-2-6; IC 14-22-20
Affected: IC 4-21.5; IC 14-22

Sec. 4. (a) An application for a license as a game breeder of one (1) or more **of the following** species of wild animals **(common names are included for public convenience, but the scientific names control)** shall be made on a departmental form:

(1) Ring-necked pheasant (Phasianus colchicus).
(2) Bobwhite quail (Colinus virginianus).
(3) White-tailed deer (Odocoileus virginianus).
(4) Eastern cottontail rabbit (Sylvilagus floridanus).
(5) Gray squirrel (Sciurus carolinensis).
(6) Fox squirrel (Sciurus niger).
(7) Southern flying squirrel (Glaucomys volans).
(8) Beaver (Castor canadensis).
(9) Coyote (Canis latrans).
(10) Gray fox (Urocyon cinereoargenteus).
(11) Red fox (Vulpes vulpes).
(12) Mink (Mustela vison).
(13) Muskrat (Ondatra zibethicus).
(14) Opossum (Didelphis marsupialis).
(15) Raccoon (Procyon lotor).
(16) Striped skunk (Mephitis mephitis).
(17) Long-tailed weasel (Mustela frenata).
(18) Least weasel (Mustela nivalis or Mustela rixosa).

(b) An application for a permit under this section must be made within five (5) days after the acquisition of an animal within Indiana or within five (5) days after the importation of an animal into Indiana. ~~but after the cages or other enclosures are readied for habitation.~~ Each cage or enclosure will be inspected by a conservation officer before a ~~permit~~ **license** may be issued.

(c) A license holder may add a species to a game breeder ~~operation~~ **license** other than those identified in the application upon ~~written notification to~~ **an inspection by a conservation officer and approval by** the division **of fish and wildlife. A conservation officer must be notified** within five (5) days of acquisition of the new species.

(d) Each animal possessed under this section must be lawfully acquired. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition shall be presented for inspection upon the request of a conservation officer. Game or furbearing mammals or game birds, other than wild turkeys, lawfully taken in season may be retained alive after the close of the season. **Any person wishing to import any live animal under this license, or the eggs of birds covered under this license, must secure a certificate of veterinary inspection from an accredited veterinarian in the state of origin before the animal is shipped into Indiana. Documentation in the form of a copy of a valid game breeder license or valid dated receipt that establishes lawful acquisition or ownership must accompany any transportation of wild animals.**

(e) A wild animal must be confined in a cage or other enclosure ~~which~~ **that** makes escape of the animal unlikely **and prevents the entrance of a free-roaming animal of the same species.** The cage or enclosure shall be large enough to provide the wild animal with ample space for exercise and to avoid overcrowding. **All chainlink or welded wire edges shall be smoothly secured to prevent injury to the animals and be kept properly repaired. Night quarters, holding pens, and nesting boxes may not be used as primary housing. Fresh water,** rainproof dens, nest boxes, **windbreaks,** shelters, shade, and bedding shall be provided as required for the comfort of the particular species of animal. Each animal shall be handled, **housed, and transported** in a sanitary and humane manner. **An enclosure must be provided with sufficient drainage to prevent standing water from accumulating.** The cages or other enclosures must be made available upon request for inspection by a conservation officer.

(f) No wild animals may be released except for bobwhite

quail and ring-necked pheasants. Known diseased bobwhite quail and ring-necked pheasants may not be released. A license holder must report the escape of any white-tailed deer to a conservation officer within twenty-four (24) hours.

~~(f)~~ **(g)** A **known** diseased wild animal possessed under this section shall not be ~~released in the wild.~~ **sold.**

(h) A license holder must comply with all applicable state, local, or other federal laws.

~~(g) A game breeder~~ **(i) A license holder** shall **do the following:**

(1) Record ~~on a bill of sale or other suitable record a transaction~~ **all transactions** by which a wild animal is sold, traded, **loaned, bartered,** or given to another person **on a departmental form or computerized record.**

(2) Keep a copy of the **transaction** record ~~shall be kept~~ on the premises of the game breeder for at least two (2) years after the transaction and **a copy** must be ~~presented~~ **provided** to a conservation officer upon request.

(3) Issue a valid, dated receipt for all animals sold, traded, bartered, or gifted and include the following information:

(A) Game breeder license number.

(B) Buyer and seller name and address.

(C) Number of animals sold.

(D) Species of animal sold.

(j) The license holder shall provide an annual report to the division by February 15. The annual report shall include for each species possessed under this license the following information:

(1) Number bought.

(2) Number sold.

(3) Number born.

(4) Number traded.

(5) Number gifted.

(6) Number of deaths.

(k) A conservation officer may enter the premises of the license holder at all reasonable hours to inspect those premises and any records relative to the license. The conservation officer shall immediately notify the license holder if the inspection reveals that the wild animals are being kept under unsanitary or inhumane conditions. The conservation officer may make a second inspection after ten (10) days, and the license may be suspended or revoked under IC 4-21.5 and the wild animals may be confiscated if the license holder fails to comply with a provision of the license.

(l) A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder fails to comply with any of the following:

(1) A provision of a license issued under this section.

(2) IC 14-22-20.

(3) All applicable state, local, or other federal laws.

(Natural Resources Commission; 312 IAC 9-10-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jan 26, 2004, 10:45 a.m.: 27 IR 1789)

LSA Document #03-149(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #00-185(F)

DIGEST

Amends and repeals various sections of 329 IAC 10 with, since the last substantive change of 329 IAC 10, effective September 1999, technical clarifications and changes that have been deemed necessary to the rule and to add requirements from the Clean Water Act, Phase 2 Storm Water provisions as they relate to landfills. Effective April 1, 2004.

HISTORY

First Notice of Comment Period: September 1, 2000, Indiana Register (23 IR 3221).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2002, Indiana Register (25 IR 3496).

Date of First Hearing: August 20, 2002 (Postponed).

Notice of Change of Public Hearing: August 1, 2002, Indiana Register (25 IR 3806).

Date of First Hearing: September 17, 2002.

Third Notice of Comment Period: November 1, 2002, Indiana Register (26 IR 430).

Notice of Second Hearing: April 1, 2003, Indiana Register (26 IR 2392).

Change of Second Hearing: October 1, 2003, Indiana Register (27 IR 208).

Date of Second Hearing: October 21, 2003.

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SECTION 1. 329 IAC 10-1-2.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-1-2.5 Incorporation by reference

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 4-22-2-21, IC 13-30-2; IC 36-9-30

Sec. 2.5. Unless specified in the incorporated by reference documents incorporated in this article, the version of documents referenced in the incorporated by reference documents is the latest version that is in effect on the date of the latest adoption of the incorporated by reference documents in this article. *(Solid Waste Management Board; 329 IAC 10-1-2.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1791, eff Apr 1, 2004)*

SECTION 2. 329 IAC 10-1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-1-4 Records and standards for submitted information

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

Sec. 4. (a) Any owner, operator, or permittee required to monitor under this article or by any permit issued under this article shall maintain all records of all monitoring information and monitoring activities, including:

(1) the date, exact place, and time of the sampling measurements;

(2) the sampling methods used;

(3) the person or persons who performed the sampling or measurements;

(4) the date or dates analyses were performed;

(5) the person or persons who performed the analyses;

(6) the analytical techniques or methods used;

(7) the results of such measurements or analyses; and

(8) all quality assurance/quality control documentation.

(b) The owner, operator, or permittee of a solid waste land disposal facility shall record and retain at the facility in an operating record, or, in an alternative location approved by the commissioner, any records required by this article.

(c) All records of monitoring activities required by this article and results thereof shall be retained by the owner, operator, or permittee of a solid waste land disposal facility for three (3) years unless otherwise specified in this article. The three (3) year period shall be extended:

(1) automatically during the course of any unresolved litigation between the commissioner and a permittee of a solid waste land disposal facility; or

(2) as required by the permit conditions.

(d) Information submitted to the department to meet a requirement of this article must meet the following standards:

(1) All drawings, plans, maps, and documentation must be properly titled and must include the following where applicable:

(A) The date and author of each drawing, plan, or map.

(B) Documentation of the coordinate system of the drawing, plan, or map, including the following:

(i) Measurement units.
(ii) Datum.
(iii) Identification of the coordinate system that was used, such as the Universal Transverse Mercator or the State Plane coordinate system.
(C) A bar scale on each drawing, plan, or map.
(D) Elevations that correlate with United States Geological Survey mean sea level data.
(E) The facility name.
(F) The state regulatory identification number, such as a permit number or authorization number.
(G) The facility's United States Environmental Protection Agency identification number, if available.
(H) A north arrow.
(I) A map legend.
(2) Submittals of sampling and monitoring results must include the following:
(A) Results of laboratory analyses.
(B) Results of field measurements, including water elevations and well depths if applicable.
(C) Laboratory name.
(D) Date of the sampling or monitoring event.

(Solid Waste Management Board; 329 IAC 10-1-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3762; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1791, eff Apr 1, 2004)

SECTION 3. 329 IAC 10-1-4.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-1-4.5 Electronic submission of information
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 4.5. (a) Electronic submission of information that is required by this article may be requested by the commissioner. The format and submittal mechanism will be prescribed by the commissioner. Any information submitted on electronic media also must be submitted as a paper copy or copies, unless the commissioner makes a determination that only an electronic copy is needed.

(b) Electronically submitted information must meet the following requirements:
(1) Section 4 of this rule.
(2) The submittal deadlines of this article.

(c) In addition to the requirements of subsection (b), submittals of drawings, plans, or maps must meet one (1) of the following requirements:
(1) Be submitted in one (1) of the following coordinate systems:
(A) Universal Transverse Mercator.
(B) State Plane coordinate system.
(C) North American Datum (NAD) 1983 or NAD 1927 that includes a description of the coordinates on the document as annotation or described in a text file included with the drawing, plot plan, or map file. The description must include the following:
(i) Measurement units.
(ii) Datum.
(iii) Identification of the coordinate system.
(2) Provide information regarding the survey coordinate system used to create the drawing, plan, or map, including the following:
(A) At least two (2), but preferably four (4) or more, reference locations, field marked and of at least the third order on each drawing, plan, or map if the site was surveyed.
(B) Coordinates for the reference locations in clause (A) should be supplied in either Universal Transverse Mercator or State Plane coordinate system and may be submitted in a separate text file or as annotation on the drawing, plan, or map.
(C) The degree of accuracy, precision, and the manner in which coordinates in clause (A) were determined for the reference coordinates is documented in a narrative on the drawing, plan, or map or in a metadata file.

(Solid Waste Management Board; 329 IAC 10-1-4.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1792, eff Apr 1, 2004)

SECTION 4. 329 IAC 10-2-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-11 "Aquiclude" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 11. "Aquiclude" means a body of relatively impermeable ~~rock~~ **material** that is capable of absorbing water slowly but does not transmit rapidly enough to supply a well or spring.

(Solid Waste Management Board; 329 IAC 10-2-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1792, eff Apr 1, 2004)

SECTION 5. 329 IAC 10-2-41 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-41 "Contaminant" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-42; IC 13-30-2; IC 36-9-30

Sec. 41. "Contaminant" ~~means any of the following:~~
~~(1) Pollutant as defined in the Federal Water Pollution Control Act (33 U.S.C. 1362, as amended November 18, 1988).~~
~~(2) Radioactive material as regulated by the Atomic Energy Act of 1954 (42 U.S.C. 2014, as amended October 24, 1992).~~
~~(3) Solid or hazardous waste as determined by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq., as effective January 1, 1989).~~
~~(4) Hazardous substance as defined by the Comprehensive~~

~~Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq., as amended November 23, 1988).~~
~~(5) Any toxic substance as determined by the Toxic Substances Control Act (15 U.S.C. 2603 et seq., as amended October 22, 1986).~~
~~(6) Any commingled waste containing waste as defined in subdivisions (1) through (5), from whatever source that:~~
~~(A) is injurious to human health, plant or animal life, or property;~~
~~(B) interferes unreasonably with the enjoyment of life or property; or~~
~~(C) is otherwise violative of this article.~~
has the meaning set forth in IC 13-11-2-42. *(Solid Waste Management Board; 329 IAC 10-2-41; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1792, eff Apr 1, 2004)*

SECTION 6. 329 IAC 10-2-41.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-41.1 "Conterminous" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 41.1. "Conterminous" means contained within the same ~~boundaries.~~ **common boundary.** *(Solid Waste Management Board; 329 IAC 10-2-41.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)*

SECTION 7. 329 IAC 10-2-63.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-63.5 "Electronic submission" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 63.5. "Electronic submission" means any submission of information to the department via electronic media. Such media may include the following:
(1) Magnetic storage tape or disk.
(2) Compact disc read-only memory (CD-ROM).
(3) Electronic mail and/or attachments.
(4) File transfer protocol (FTP).
(5) Hypertext transfer protocol (HTTP).
(Solid Waste Management Board; 329 IAC 10-2-63.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)

SECTION 8. 329 IAC 10-2-64 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-64 "Endangered species" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 64. "Endangered species" ~~has the meaning set forth in~~ **means any species listed as endangered or threatened under rules of the natural resources commission at** 312 IAC 9-3-19, 312 IAC 9-4-14, 312 IAC 9-5-4, ~~and~~ 312 IAC 9-6-9, **or 312 IAC 9-9-4.** *(Solid Waste Management Board; 329 IAC 10-2-64; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)*

SECTION 9. 329 IAC 10-2-66.1 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-66.1 "Erosion" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 66.1. "Erosion" means the detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity. *(Solid Waste Management Board; 329 IAC 10-2-66.1; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)*

SECTION 10. 329 IAC 10-2-66.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-66.2 "Erosion and sediment control measure" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 66.2. "Erosion and sediment control measure" means a practice, or a combination of practices, to control erosion and resulting sedimentation. *(Solid Waste Management Board; 329 IAC 10-2-66.2; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)*

SECTION 11. 329 IAC 10-2-66.3 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-66.3 "Erosion and sediment control system" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 66.3. "Erosion and sediment control system" means the use of appropriate erosion and sediment control measures to minimize sedimentation by first reducing or eliminating erosion at the source and then, as necessary, trapping sediment to prevent it from being discharged from or within a facility boundary. *(Solid Waste Management Board; 329 IAC 10-2-66.3; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)*

SECTION 12. 329 IAC 10-2-69 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-69 "Facility" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 69. "Facility" may consist of one (1) or more permitted

processing, storage, disposal, or operational units used for processing, storing in conjunction with processing or disposal, or disposing of solid waste. The term includes:

(1) all conterminous land and structures related to the permit **within the facility boundary;**

(2) other appurtenances related to the permit; and

(3) improvements on the land related to the permit.

(Solid Waste Management Board; 329 IAC 10-2-69; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1793, eff Apr 1, 2004)

SECTION 13. 329 IAC 10-2-74 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-74 "Flood plain" defined

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

Sec. 74. "Flood plain" means the areas adjoining a river, stream, or lake that are inundated by the base flood. ~~as determined by 310 IAC 6.~~ *(Solid Waste Management Board; 329 IAC 10-2-74; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1794, eff Apr 1, 2004)*

SECTION 14. 329 IAC 10-2-75 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-75 "Floodway" defined

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

Sec. 75. "Floodway" means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flow ~~from~~ **of** the base flood. ~~as determined by 310 IAC 6.~~ *(Solid Waste Management Board; 329 IAC 10-2-75; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1794, eff Apr 1, 2004)*

SECTION 15. 329 IAC 10-2-75.1 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-75.1 "Floodway fringe" defined

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

Sec. 75.1. "Floodway fringe" means any area of flood plain that has not been adequately protected from flooding by the base flood by means of dikes, levees, reservoirs, or other similar works. *(Solid Waste Management Board: 329 IAC 10-2-75.1; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1794, eff Apr 1, 2004)*

SECTION 16. 329 IAC 10-2-96 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-96 "Infectious waste" defined

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

Sec. 96. "Infectious waste" has the meaning set forth in **the rules of the state department of health at** 410 IAC 1-3-10, as supported by the ancillary definitions of 410 IAC 1-3. ~~and applies to facilities regulated under 410 IAC 1-3.~~ *(Solid Waste Management Board; 329 IAC 10-2-96; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1794, eff Apr 1, 2004)*

SECTION 17. 329 IAC 10-2-97.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-97.1 "Insignificant facility modification" defined

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

Sec. 97.1. "Insignificant facility modification" means the following:

(1) Relocation of a solid waste land disposal facility waste hauling road.

(2) Relocation of office buildings.

(3) Changes in sequences of filling in permitted areas.

(4) Installation of temporary sediment control measures.

(5) Installation of leachate control systems to prevent leachate migration off-site.

(6) Installation of additional methane venting wells to an approved system.

(7) Installation of weighing scales.

(8) Replacement of a **ground water** monitoring well **or piezometer** no more than ~~ten (10)~~ **fifteen (15)** feet horizontally from the original location and at an equal depth.

(9) **Use of** an alternative daily cover (ADC) under 329 IAC 10-20-14.1(c).

(10) Approvals granted under 329 IAC 10-21 unless the commissioner determines ~~otherwise.~~ **the approval to be a minor modification.**

~~(11) Any modification to the solid waste land disposal facility that the commissioner determines will improve the operation of the facility without significantly altering the approved solid waste land disposal permit.~~

~~(12) An ADC under 329 IAC 10-20-14.1(d).~~

(11) Alternative storage methods for salvaged or recycled materials under 329 IAC 10-20-6(b).

(12) Changes in the frequency that collection containers regulated under 329 IAC 10-20-4(g)(1) and 329 IAC 10-20-4(g)(2) must be emptied.

(13) Improvements to drainage at the facility **or modifications to sediment controls.**

(14) Use of an ADC under 329 IAC 10-20-14.1(d).

(15) Any modification to the solid waste land disposal facility that the commissioner determines will improve the operation of the facility without significantly altering

the approved solid waste land disposal permit.
(Solid Waste Management Board; 329 IAC 10-2-97.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1794, eff Apr 1, 2004)

SECTION 18. 329 IAC 10-2-99 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-99 "Karst terrain" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 99. "Karst ~~terrains"~~ **terrain"** means an area where karst topography, ~~with its~~ **including the** characteristic surface and subterranean features, ~~is~~ **has** developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present ~~to~~ **in** karst terrains **or characteristics of karst terrains** include any of the following:

(1) Sinkholes.
(2) Sinking streams.
(3) Caves.
(4) Large springs.
(5) Blind valleys.
(6) Grikes.
(7) Karren.
(8) Solution widened joints or bedding planes.
(9) Loss of drilling fluid during core drilling.
(10) Anasotmosis, and conduits of less than one (1) meter, but more than two and five-tenths (2.5) millimeters.
(11) Karst aquifer.

(Solid Waste Management Board; 329 IAC 10-2-99; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)

SECTION 19. 329 IAC 10-2-100 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-100 "Land application unit" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 100. "Land application unit" means an area where waste is applied onto or incorporated **or injected** into the soil surface, excluding manure spreading operations, for agricultural purposes. *(Solid Waste Management Board; 329 IAC 10-2-100; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)*

SECTION 20. 329 IAC 10-2-105.3 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-105.3 "Licensed professional geologist" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-17.6-1-6.5; IC 36-9-30

Sec. 105.3. "Licensed professional geologist" has the meaning set forth in IC 25-17.6-1-6.5. *(Solid Waste Management Board; 329 IAC 10-2-105.3; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)*

SECTION 21. 329 IAC 10-2-106 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-106 "Liquid waste" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 106. "Liquid waste" means any waste material that contains free liquids as determined by Method ~~9095~~ **9095A** (Paint Filter Liquids Test), as described in ~~"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods",~~ **U.S.** EPA Publication SW-846. ~~(Third Edition, November 1986, as amended by Updates 1 (July 1992), 2 (September 1994), 2A (August 1993), and 2B (January 1995).~~ *(Solid Waste Management Board; 329 IAC 10-2-106; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)*

SECTION 22. 329 IAC 10-2-109 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-109 "Major modification of solid waste land disposal facilities" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 109. "Major modification of solid waste land disposal facilities" means any increase in a permitted solid waste land disposal facility that would:

(1) increase the permitted capacity to process or dispose of solid waste by the lesser of:
(A) more than ten percent (10%); or
(B) five hundred thousand (500,000) cubic yards; or
(2) ~~change~~ **increase the area within** the permitted solid waste boundary by more than one (1) acre.

(Solid Waste Management Board; 329 IAC 10-2-109; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)

SECTION 23. 329 IAC 10-2-112 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-112 "Minor modification of solid waste land disposal facilities" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 112. (a) "Minor modification of solid waste land disposal facilities" means any ~~increase~~ **modification** in a permitted solid waste land disposal facility that would not:

(1) increase the facility's permitted capacity to dispose of solid waste by the lesser of:
(A) more than ten percent (10%); or

(B) five hundred thousand (500,000) cubic yards;
(2) ~~change~~ **increase the area within** the permitted solid waste boundary by more than one (1) acre;
(3) include those items determined to be insignificant modifications by 329 IAC 10-3-3(b) or by the commissioner; or
(4) include those items determined to be major modifications by section 109 of this rule.

(b) ~~The term includes:~~ **A minor modification may include the addition or modification of:**
(1) an alternative daily cover (ADC) under 329 IAC 10-20-14.1(e); ~~and~~
(2) a baled waste management plan under 329 IAC 10-20-31(3); **and**
(3) a borrow pit:
(A) owned by the owner, operator, or permittee;
(B) not permitted by the department before April 1, 2004; and
(C) located on-site or on property adjoining the facility.
(Solid Waste Management Board; 329 IAC 10-2-112; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)

SECTION 24. 329 IAC 10-2-121.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-121.1 "Nonmunicipal solid waste landfill unit" or "non-MSWLF unit" defined
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 36-9-30

Sec. 121.1. "Nonmunicipal solid waste landfill unit" or "non-MSWLF unit" means a discrete area of land or an excavation that is permitted to receive general types of solid waste, excluding municipal solid waste as defined in section 115 of this rule and hazardous waste regulated by 329 IAC 3.1, for disposal and that is not a land application unit, surface impoundment, injection well, or waste pile. ~~as those terms are defined in 40 CFR 257.2.~~ Such a landfill unit may be publicly or privately owned. A nonmunicipal solid waste landfill unit may be a new nonmunicipal solid waste landfill unit, an existing nonmunicipal solid waste landfill unit, or a lateral expansion. *(Solid Waste Management Board; 329 IAC 10-2-121.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)*

SECTION 25. 329 IAC 10-2-132.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-132.2 "Peak discharge" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 132.2. "Peak discharge" means the maximum rate of flow during a storm, usually in reference to a specific design storm event. *(Solid Waste Management Board; 329 IAC 10-2-132.2; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)*

SECTION 26. 329 IAC 10-2-132.3 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-132.3 "Permanent stabilization" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 132.3. "Permanent stabilization" means the establishment, at a uniform density of ninety percent (90%) across the disturbed area, of vegetative cover or permanent nonerosive material that will ensure the resistance of the soil to erosion, sliding, or other movement. *(Solid Waste Management Board; 329 IAC 10-2-132.3; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)*

SECTION 27. 329 IAC 10-2-142.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-142.5 "Preliminary exceedance" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 142.5. "Preliminary exceedance" means the statistically significant increase in concentration of any constituent prior to the increase being verified under 329 IAC 10-21-8. *(Solid Waste Management Board; 329 IAC 10-2-142.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)*

SECTION 28. 329 IAC 10-2-151 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-151 "Registered land surveyor" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-21.5; IC 36-9-30

Sec. 151. "Registered land surveyor" means a land surveyor registered by the ~~state~~ **board of registration for land surveyors** under ~~IC 25-31.~~ **IC 25-21.5.** *(Solid Waste Management Board; 329 IAC 10-2-151; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)*

SECTION 29. 329 IAC 10-2-158 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-158 "Responsible corporate officer" defined
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. 158. "Responsible corporate officer" means a president, secretary, treasurer, or any vice president of the corporation **or corporate division** in charge of a principal business function that includes the activity to be permitted. *(Solid Waste Manage-*

ment Board; 329 IAC 10-2-158; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1796, eff Apr 1, 2004)

SECTION 30. 329 IAC 10-2-165.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-165.5 "Sedimentation" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 165.5. "Sedimentation" means the settling and accumulation of unconsolidated sediment carried by storm water run-off. *(Solid Waste Management Board; 329 IAC 10-2-165.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 31. 329 IAC 10-2-172.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-172.5 "Soil and water conservation district" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 172.5. "Soil and water conservation district" or "SWCD" means a political subdivision established under IC 14-32. *(Solid Waste Management Board; 329 IAC 10-2-172.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 32. 329 IAC 10-2-181.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-181.2 "Storm water discharge" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 181.2. "Storm water discharge" means the release or flow of storm water past the facility boundary or into a water of the state. *(Solid Waste Management Board; 329 IAC 10-2-181.2; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 33. 329 IAC 10-2-181.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-181.5 "Storm water pollution prevention plan" or "SWP3" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 181.5. "Storm water pollution prevention plan" or "SWP3" means a written plan developed to minimize the impact of storm water pollutants resulting from construction and landfill operation activities. *(Solid Waste Management Board; 329 IAC 10-2-181.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 34. 329 IAC 10-2-181.6 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-181.6 "Storm water quality measure" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 181.6. "Storm water quality measure" means a practice, or a combination of practices, to control or minimize pollutants associated with storm water run-off. *(Solid Waste Management Board; 329 IAC 10-2-181.6; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 35. 329 IAC 10-2-187.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-187.5 "Temporary stabilization" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 187.5. "Temporary stabilization" means the covering of soil to ensure the resistance of the soil to erosion, sliding, or other movement. The term includes vegetative cover, anchored mulch, or other nonerosive material applied at a uniform density of seventy percent (70%) across the disturbed area. *(Solid Waste Management Board; 329 IAC 10-2-187.5; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)*

SECTION 36. 329 IAC 10-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-3-1 Exclusions; general
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-14; IC 13-19-3; IC 13-20; IC 36-9-30

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

(1) ~~Disposing~~ **Disposal** of only uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(2) Land application activities regulated ~~by 327 IAC 6~~ **under rules of the water pollution control board at 327 IAC 6.1** and ~~327 IAC 7.~~ **327 IAC 7.1.**

(3) Confined feeding control activities regulated ~~by IC 13-18-10.~~ **under rules of the water pollution control board at 327 IAC 16.**

(4) Wastewater discharge activities regulated ~~by~~ **under rules of the water pollution control board at** 327 IAC 5.

(5) Solid waste management activities regulated ~~by~~ **under** 329 IAC 11.

(6) Disposal of ~~saw dust which is derived from processing untreated natural wood~~ **uncontaminated and untreated natural growth solid waste, including tree limbs, stumps, leaves, and grass clippings**.

(7) ~~The~~ Disposal of ~~coal ash, transported by water, into an~~

~~ash pond which has received a water pollution control facility construction permit under 327 IAC 3~~ **saw dust derived from processing untreated natural wood.**

~~(8) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (7) and (9).~~

(8) Disposal of coal ash, transported by water, into an ash pond which has received a water pollution control facility construction permit under rules of the water pollution control board at 327 IAC 3.

~~(9) The disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.~~

(9) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (8) and (10). The commissioner's approval is based on management practices that are protective of human health and the environment.

(10) ~~Uses and~~ Disposal of coal ~~waste as exempted from regulation in IC 13-19-3.~~ **ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.**

~~(11) The legitimate use of iron and steelmaking slags including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).~~

~~(12) The legitimate use of foundry sand which has been demonstrated to the satisfaction of the commissioner as suitable for restricted waste site type III under the provisions of 329 IAC 10-9-4, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).~~

~~(13) Other uses of solid waste may be approved by the commissioner if the commissioner determines them to be legitimate uses that do not pose a threat to public health and environment.~~

(11) The uses and disposal of coal waste as exempted under IC 13-19-3-3.

(12) Activities concerning wastes containing polychlorinated biphenyls (PCBs) regulated under 329 IAC 4.1, except those regulated as alternative daily cover under 329 IAC 10-20-14.1.

(13) Storage, transportation, and processing of used oil as regulated under 329 IAC 13.

(14) The legitimate use of slag under IC 13-19-3-8.

(15) The legitimate use of foundry sand under IC 13-19-3-7.

(16) Any other use of solid waste approved by the commissioner based on the commissioner's determination that the use is a legitimate use that does not pose a threat to public health or the environment.

(Solid Waste Management Board; 329 IAC 10-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2749; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3771; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004)

SECTION 37. 329 IAC 10-3-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-3-2 Exclusion; hazardous waste

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

Sec. 2. (a) Hazardous wastes are regulated by and shall be treated, stored, and disposed of in accordance with 329 IAC 3.1. Hazardous waste that is regulated by 329 IAC 3.1 is not subject to the provisions of this article, **except as provided in subsection (c).**

(b) No hazardous waste that is regulated by 329 IAC 3.1 shall be disposed at any solid waste land disposal facility regulated under this article, **except as provided in subsection (c).**

(c) ~~As used in this article, "hazardous waste that is regulated by 329 IAC 3.1" does not include hazardous waste generated in quantities less than one hundred (100) kilograms per month and is therefore excluded from regulation under the hazardous waste management article, 329 IAC 3.1. Such small quantities of~~ Hazardous waste ~~shall~~ **generated by a conditionally exempt small quantity generator (CESQG hazardous waste), as regulated under 40 CFR 261.5, revised July 1, 2002, may only** be disposed of in **either:**

(1) a municipal solid waste landfill permitted in accordance with this article; **or**

(2) a hazardous waste landfill permitted in accordance with 329 IAC 3.1.

(d) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility. *(Solid Waste Management Board; 329 IAC 10-3-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3776; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1798, eff Apr 1, 2004)*

SECTION 38. 329 IAC 10-3-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-3-3 Insignificant facility modifications

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

Sec. 3. (a) A permittee of a solid waste land disposal facility proposing insignificant facility modifications may not be required to apply for a minor or a major modification of the current permit from the commissioner. See the definition of

insignificant facility modification at 329 IAC 10-2-97.1.

(b) If a permittee proposes or is required to make an insignificant facility modification described in 329 IAC 10-2-97.1(1), 329 IAC 10-2-97.1(2), 329 IAC 10-2-97.1(3), 329 IAC 10-2-97.1(4), 329 IAC 10-2-97.1(5), 329 IAC 10-2-97.1(6), 329 IAC 10-2-97.1(7), 329 IAC 10-2-97.1(8), 329 IAC 10-2-97.1(9), ~~or~~ 329 IAC 10-2-97.1(10), **329 IAC 10-2-97.1(11), or 329 IAC 10-2-97.1(12),** the permittee shall provide notice to the commissioner no later than seven (7) calendar days after the modification has been made. The notice shall include a detailed description of the project and the date the project was or is expected to be completed.

(c) If the permittee proposes to make an insignificant facility modification described in ~~329 IAC 10-2-97.1(11), 329 IAC 10-2-97.1(12),~~ 329 IAC 10-2-97.1(13), ~~or~~ 329 IAC 10-2-97.1(14), **or 329 IAC 10-2-97.1(15)** the permittee shall submit documentation of the proposed insignificant facility modifications to the commissioner. The documentation must include a detailed description of the proposed project.

(d) If the commissioner determines that insufficient documentation has been provided to determine whether or not the proposed modification under subsection (c) is an insignificant facility modification, the permittee will be notified in writing by the commissioner within thirty (30) days after receipt of the proposal that the permittee must submit a new proposal for the insignificant modification.

~~(d)~~ **(e)** If the commissioner determines that the modification under subsection (c) is a major or minor modification, the permittee will be notified in writing within thirty (30) days after receipt of the information to the commissioner that the permittee must submit an application for a minor or major modification to the current permit.

~~(e)~~ **(f)** If the permittee does not receive notification from the commissioner within thirty (30) days after ~~submission~~ **receipt** of the proposed modifications to the commissioner, the permittee may initiate the insignificant facility modifications in accordance with documentation provided to the commissioner.

~~(f)~~ **(g)** No permit modification shall be required for insignificant facility modifications made under this subsection to:

(1) correct operational violations under this article; or

(2) protect human health ~~and~~ **or** the environment.

(Solid Waste Management Board; 329 IAC 10-3-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2749; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3776; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1798, eff Apr 1, 2004)

SECTION 39. 329 IAC 10-6-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-6-4 Remedial action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-25-4-7; IC 13-25-4-8; IC 36-9-30

Sec. 4. If the commissioner determines that the closed solid waste land disposal facility is or may be a threat to human health or the environment, due to a release **or threat of release** of contaminants from the solid waste land disposal facility into the environment, the commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7 that require the owner, operator, or permittee of a closed solid waste land disposal facility or the owner of real estate upon which a closed solid waste land disposal facility is located, or any other responsible person under IC 13-25-4-8, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices **and corrective action under 329 IAC 10-21-13.** *(Solid Waste Management Board; 329 IAC 10-6-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2751; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1799, eff Apr 1, 2004)*

SECTION 40. 329 IAC 10-10-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-10-1 Applicability

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

Sec. 1. (a) Unless otherwise addressed in this rule, all MSWLFs and new and existing MSWLF units must comply with applicable requirements in this article. ~~after the effective date of this article.~~

(b) Within one hundred twenty (120) days following ~~the effective date of this rule~~ **April 13, 1996,** the owner, operator, or permittee of a MSWLF permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, shall submit any necessary permit modification ~~applications~~ **application** to comply with the requirements of this article, **329 IAC 10, as effective on April 13, 1996.**

(c) On or before August 2, 2004, the owner, operator, or permittee of an MSWLF shall submit any necessary permit modification applications to comply with the requirements of this article as amended on April 1, 2004, unless subsection (d) is applicable.

(d) On or before August 2, 2004, the owner, operator or permittee of an MSWLF shall submit information for the agency's approval which includes the SWP3 and associated information as required in 329 IAC 10-11-2.5(a)(10) through (13), 329 IAC 10-15-2(b)(10) and (11), 329 IAC 10-15-2(d)(4)(G) through (L), and 329 IAC 10-15-12 *[329 IAC 10-11-2.5(a)(10) through 329 IAC 10-11-2.5(a)(13), 329 IAC 10-15-2(b)(10) and 329 IAC 10-15-2(b)(11), 329 IAC 10-15-2(d)(4)(G) through 329 IAC 10-15-2(d)(4)(L), and 329 IAC 10-*

15-12]. **Approvals will be issued subject to the following schedule:**

(1) Any owner, operator, or permittee of an MSWLF located in the counties of:

(A) Adams;
(B) Allen;
(C) Bartholomew;
(D) Benton;
(E) Blackford;
(F) Boone;
(G) Brown;
(H) Carroll;
(I) Cass;
(J) Clark;
(K) Clay;
(L) Clinton;
(M) Crawford;
(N) Daviess;
(O) Dearborn;
(P) Decatur;
(Q) Dekalb;
(R) Delaware;
(S) Dubois;
(T) Elkhart;
(U) Fayette;
(V) Floyd;
(W) Fountain;
(X) Franklin;
(Y) Fulton;
(Z) Gibson;
(AA) Grant; and
(BB) Greene;

in Indiana shall be issued an approval within sixty (60) days of the receipt of all information required. The sixty (60) day period shall be suspended from the date that a notice of deficiency has been issued by the department to the owner, operator, or permittee until receipt by the department of a complete and technically adequate response to the notice of deficiency.

(2) Any owner, operator, or permittee of an MSWLF located in the counties of:

(A) Hamilton;
(B) Hancock;
(C) Harrison;
(D) Hendricks;
(E) Henry;
(F) Howard;
(G) Huntington;
(H) Jackson;
(I) Jasper;
(J) Jay;
(K) Jefferson;
(L) Jennings;
(M) Johnson;
(N) Knox;
(O) Kosciusko;
(P) LaGrange;
(Q) Lake;
(R) LaPorte;
(S) Lawrence;
(T) Madison;
(U) Marion;
(V) Marshall;
(W) Martin;
(X) Miami; and
(Y) Monroe;

in Indiana will be issued an approval within ninety (90) days of the receipt of all information required. The ninety (90) day period shall be suspended from the date that a notice of deficiency has been issued by the department to the owner, operator, or permittee until receipt by the department of a complete and technically adequate response to the notice of deficiency.

(3) Any owner, operator, or permittee of an MSWLF located in the counties of:

(A) Montgomery;
(B) Morgan;
(C) Newton;
(D) Noble;
(E) Ohio;
(F) Orange;
(G) Owen;
(H) Parke;
(I) Perry;
(J) Pike;
(K) Porter;
(L) Posey;
(M) Pulaski;
(N) Putnam;
(O) Randolph;
(P) Ripley;
(Q) Rush;
(R) St. Joseph;
(S) Scott;
(T) Shelby;
(U) Spencer;
(V) Starke;
(W) Steuben;
(X) Sullivan;
(Y) Switzerland;
(Z) Tippecanoe;
(AA) Tipton;
(BB) Union;
(CC) Vanderburgh;
(DD) Vermillion;
(EE) Vigo;
(FF) Wabash;
(GG) Warren;
(HH) Warrick;
(II) Washington;

(JJ) Wayne;
(KK) Wells;
(LL) White; and
(MM) Whitley;

in Indiana will be issued an approval within one hundred twenty (120) days of receipt of all information required. The one hundred twenty (120) day period shall be suspended from the date that a notice of deficiency has been issued by the department to the owner, operator, or permittee until receipt by the department of a complete and technically adequate response to the notice of deficiency.

(Solid Waste Management Board; 329 IAC 10-10-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3787; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1799, eff Apr 1, 2004)

SECTION 41. 329 IAC 10-10-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-10-2 Pending applications

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

Sec. 2. ~~A permit application:~~

~~(1) that is received on or before June 21, 1995, will not be required to be revised to meet the requirements of this article; however, the application must comply with 329 IAC 2, which was repealed in 1996, and applicable federal requirements; or~~

~~(2) that is received after June 21, 1995, will be required to comply with all applicable requirements of this article.~~

An owner, operator, or permittee of an MSWLF that is issued a permit for a new facility or a major modification on or after April 1, 2004, based upon an application received before that date, shall, within sixty (60) days following issuance of the permit for a new facility or a major modification, submit the following:

(1) Any necessary permit modification application to comply with this article, as amended on April 1, 2004, unless subdivision (2) is applicable.

(2) All information for the agency's approval, which includes the SWP3 and associated information as required in 329 IAC 10-11-2.5(a)(10) through (13), 329 IAC 10-15-2(b)(10) and (11), 329 IAC 10-15-2(d)(4)(G) through (L), and 329 IAC 10-15-12 *[329 IAC 10-11-2.5(a)(10) through 329 IAC 10-11-2.5(a)(13), 329 IAC 10-15-2(b)(10) and 329 IAC 10-15-2(b)(11), 329 IAC 10-15-2(d)(4)(G) through 329 IAC 10-15-2(d)(4)(L), and 329 IAC 10-15-12]***. The submission must include all required information.**

(Solid Waste Management Board; 329 IAC 10-10-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2751; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1801, eff Apr 1, 2004)

SECTION 42. 329 IAC 10-11-2.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-11-2.1 Permit application requirements; general

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

Sec. 2.1. (a) An application for any solid waste land disposal facility permit, including renewals, or for a modification to a solid waste land disposal facility permit, excluding insignificant modifications, must be submitted to the commissioner on permit application forms provided by the commissioner in a format specified by the commissioner. All narrative, plans, and other support documentation accompanying the application must also be submitted in a format specified by the commissioner.

(b) A complete application must include all of the following information:

(1) The name and address of the applicant.

(2) The name and address of the solid waste land disposal facility site.

(3) The name and address of the solid waste land disposal facility owner, operator, or permittee if different from the real property owner.

(4) The names and addresses of members of the board of county commissioners of a county that is affected by the permit application.

(5) The names and addresses of the mayors of any cities that are affected by the permit application.

(6) The names and addresses of the presidents of town councils of any towns that are affected by the permit application.

(7) The legal description as defined in 329 IAC 10-2-104 for the following:

(A) The solid waste land disposal facility ~~boundaries.~~ **boundary.**

(B) If applicable, the solid waste boundary defining the area where the solid waste is to be deposited.

(C) Sufficient documentation must be provided to verify that the waste deposition area is located within the facility boundaries. Documentation must include a map of the legal description for these areas certified by a registered land surveyor.

(8) Solid waste land disposal facility information, including the following:

(A) A description of the type of operation.

(B) The planned **or remaining** life of the solid waste land disposal facility in years.

(C) The expected ~~volume~~ **amount** of waste to be received in tons per operating day ~~and~~ **or** cubic yards per operating day.

(D) The type of waste to be received.

(9) Signatures and certification statements in compliance with section 3 of this rule.

(10) Disclosure of all good character information as

described in IC 13-19-4 unless the application is for a minor modification.

(c) Five (5) copies of the completed application and all supporting documentation must be submitted to the commissioner as follows:

(1) Sent by registered mail, ~~or~~ certified mail, **private carrier,** or delivered in person.

(2) In addition to the paper copies, a copy of the completed application and all supporting documentation may be submitted ~~on digital media,~~ **by electronic submission,** the type and format of which will be prescribed by the ~~department.~~ **commissioner. The commissioner may make a determination that only an electronic copy is needed.**

(3) Plans and documentation accompanying the application shall be submitted as required in 329 IAC 10-15-1(c).

(d) Confidential treatment of information may be requested in accordance with ~~the rules of the solid waste management board~~ **329 IAC 6.1** for **all or a portion of** the permit application and supporting ~~documents.~~ **documentation.**

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

(f) Fees must be submitted with the application in accordance with IC 13-20-21. *(Solid Waste Management Board; 329 IAC 10-11-2.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3788; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1801, eff Apr 1, 2004)*

SECTION 43. 329 IAC 10-11-2.5 IS AMENDED TO READ AS FOLLOWS:

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

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

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

(1) Detailed plans and design specifications as required by:

(A) 329 IAC 10-15 through 329 IAC 10-19 and 329 IAC 10-22, as applicable;

(B) 329 IAC 10-24 through 329 IAC 10-27 and 329 IAC 10-30, as applicable; or

(C) 329 IAC 10-32 through 329 IAC 10-35 and 329 IAC 10-37, as applicable.

(2) Closure and post-closure plans as required by:

(A) 329 IAC 10-22-2 and 329 IAC 10-23-3, as applicable;

(B) 329 IAC 10-30-4 and 329 IAC 10-31-3, as applicable; or

(C) 329 IAC 10-37-4 and 329 IAC 10-38-3, as applicable.

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

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

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

(6) Documentation that proper zoning approvals have been obtained, including the following, if applicable:

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

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

(C) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if a change in the zone maps is required for the area where the solid waste land disposal facility is to be located.

(D) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if such amendment is required for the area where the solid waste land disposal facility is to be located.

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

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

(7) A United States Geological Survey topographical quadrangle map seven and one-half (7½) minute, or equivalent, to include all areas within two (2) miles of the proposed facility boundaries with **real** property boundaries and proposed solid waste boundaries clearly delineated.

(8) Documentation of the base flood elevation within one-fourth (¼) mile of the proposed facility boundaries. Either of the following forms of documentation are acceptable:

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

(B) A national flood insurance program map.

(9) A scaled map that depicts the following features, which are known to the applicant or are discernable from public records, on and within one-half (½) mile of the proposed facility boundaries:

(A) Airports.
(B) Buildings.
(C) City, township, county, state, or national forests or parks.
(D) Coal borings.
(E) Culverts.
(F) Drainage tiles.
(G) Dwellings.
(H) Fault areas.
(I) Floodplains, **floodway fringes, and floodways.**
(J) Gas or oil wells.
(K) Hospitals.
(L) Legal drains.
(M) Nature preserves regulated under ~~IC 14-4-5~~ **IC 14-31-1** or **any** critical habitats ~~regulated under 50 CFR 17.~~ **as contained in 50 CFR 17.95 or 50 CFR 17.96, revised as of October 1, 2002.**
(N) Pipelines.
(O) Power lines.
(P) Roads.
(Q) Schools.
(R) Sewers.
(S) Sinkholes.
(T) Springs and seeps.
(U) Surface or underground mines.
(V) Swamps.
(W) Water courses or surface water, including reservoirs.
(X) Wells.
(Y) Wetlands.

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

(10) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exist.

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

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

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

~~(10)~~ **(14)** A soil map and related description data as published by the United States Department of Agriculture, Natural Resources Conservation Service.

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

~~(11)~~ **(16)** Well logs and a topographic map indicating the location and identifying with respect to the drilling logs, all wells within one (1) mile of the proposed facility boundaries that are on file with the department of natural resources.

~~(12)~~ **(17)** A survey must be conducted for any residences or occupied buildings within one-fourth (¼) of a mile of the proposed facility boundaries that do not have a well log. The survey is to determine whether wells that do not have well logs on file with the department of natural resources are present and obtain any information regarding these wells. A summary of the results of the survey and any information gained must be included with the application.

~~(13)~~ **(18)** The name and address of all owners or last taxpayers of record of property:
(A) located within one (1) mile of the proposed solid waste boundaries of a solid waste land disposal facility; and
(B) of adjoining land that is within one-half (½) of a mile of the solid waste boundary.

~~(14)~~ **(19)** A signed affidavit to the department agreeing to notify adjoining landowners as required in 329 IAC 10-12-1(b)(1).

~~(15)~~ **(20)** The following information relative to wetlands under 329 IAC 10-16-3 and other waters ~~of the state:~~ **defined under IC 13-11-2-265:**
(A) A copy of the U.S. Army Corps of Engineers Section 404 of the Clean Water Act permit and a copy of the Indiana department of environmental management Section 401 water quality certification or documentation acceptable to the department that a Section 404 **permit** and Section 401 water quality certification are not required.
(B) Any other mitigation plans required by any other government agency including permit conditions or restrictions placed on the siting of the solid waste land disposal facility in relationship to any other waters ~~of the state as defined by 329 IAC 10-2-205.~~ **under IC 13-11-2-265.**

(b) Restricted waste site Type III and construction/demolition landfills are exempt from submitting the information required in subsection (a)(9). *(Solid Waste Management Board; 329 IAC 10-11-2.5; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3789; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1802, eff Apr 1, 2004)*

SECTION 44. 329 IAC 10-11-5.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-11-5.1 Renewal permit application
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20-21; IC 36-9-30

Sec. 5.1. (a) In addition to the application requirements given at section 2.1 of this rule, **excluding section 2.1(c)(3) of this rule,** a complete application for a renewal of a solid waste land disposal facility permit must include all the following information:

(1) The name and address of all owners or last taxpayers of record of property of adjoining land that is within one-half (½) mile of the solid waste boundary.

(2) The operation permit number of the solid waste land disposal facility.

(3) The ~~legal description of the solid~~ **number of acres permitted for** waste ~~land~~ disposal. ~~facility location as defined in 329 IAC 10-2-104.~~

~~(4) Facility information, including the following:~~

~~(A) A description of the type of operation under 329 IAC 10-9-1.~~
~~(B) The number of acres permitted for waste disposal.~~
~~(C) The remaining life of the solid waste land disposal facility in years.~~
~~(D) The volume of waste received at the solid waste land disposal facility in cubic yards per operating day or tons per operating day.~~
~~(E) The type of waste received at the solid waste land disposal facility.~~

~~(5)~~ **(4)** A topographic plot plan that reflects the current condition of the solid waste land disposal facility and current elevations taken within ~~six (6)~~ **twelve (12)** months of the submittal of the application and accurately ~~identifying~~ **identifies** the following information to a scale as required by 329 IAC 10-15-2(a), 329 IAC 10-24-2(a), or 329 IAC 10-32-2(a):

(A) Areas of final cover, ~~grading, and seeding.~~ **including certified closed area, and type of final cover.**

(B) Filled areas lacking final cover, grading, and seeding.

(C) Current areas of operation. ~~including depth of waste fill.~~

(D) Projected solid waste disposal areas on a per year basis for the next five (5) years.

~~(6) Signatures and certification statements in compliance with section 3 of this rule.~~

(5) A copy of the latest approved final contour plot plan with scale, as required by 329 IAC 10-15-2(a).

(6) A copy of the latest approved subgrade contours or the uppermost contour of the soil liner.

(b) An application for a renewal of a solid waste land disposal facility permit must be submitted at least one hundred twenty (120) days prior to the expiration date of the permit or the permit will be invalid upon expiration.

(c) Fees must be submitted with the application in accordance with IC 13-20-21. *(Solid Waste Management Board; 329 IAC 10-11-5.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3791; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1803, eff Apr 1, 2004)*

SECTION 45. 329 IAC 10-11-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-11-6 Minor modification applications

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1
Affected: IC 13-20-1; IC 13-21-5; IC 36-9-30

Sec. 6. (a) In addition to the application requirements given at section 2.1 of this rule, ~~for a minor modification of a solid waste facility permit,~~ **excluding section 2.1(b)(10) of this rule,** adequate information must be included in an application for a minor modification of a solid waste land disposal facility permit to demonstrate that the minor modification will be protective of human health and the environment. The commissioner shall determine the information adequate based on the type of minor modification requested by the facility.

(b) In addition to ~~any~~ **the** requirements in subsection (a), the application must also include the name and address of all owners or last taxpayers of record of property of adjoining land that is within one-half (½) mile of the solid waste boundary.

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

(d) Borrow pits owned by the owner, operator, or permittee and not permitted by the department before April 1, 2004, must be included in the facility permit through application for minor modification on application forms provided by the commissioner. This requirement includes a borrow pit:

(1) owned by the owner, operator, or permittee;

(2) not permitted by the department before April 1, 2004; and

(3) located on-site or on property adjoining the facility.

(Solid Waste Management Board; 329 IAC 10-11-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2755; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3791; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1804, eff Apr 1, 2004)

SECTION 46. 329 IAC 10-12-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-12-1 Public process for new solid waste land disposal facility permits; major permit modifications; minor permit modifications

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1
Affected: IC 5-3-1-2; IC 5-3-1-6; IC 5-3-2; IC 13-15-3-3; IC 13-20; IC 36-9-30

Sec. 1. (a) A person submitting ~~an affidavit as required by 329 IAC 10-11-2.5(a)(13) and~~ an application for one (1) of the following shall **submit an affidavit as required by 329 IAC 10-11-2.5(a)(19) and shall** make notice as required in subsection (b):

(1) A new solid waste land disposal facility permit.

(2) A major modification for a lateral expansion permit **or a vertical expansion permit.**

(3) A minor modification permit ~~under 329 IAC 10-2-112(a)(2).~~ **for an acreage expansion that would not:**

(A) increase the facility's permitted capacity to dispose of solid waste by the lesser of:

(i) more than ten percent (10%); or

(ii) five hundred thousand (500,000) cubic yards; or

(B) in an acreage expansion, increase the area within the permitted solid waste boundary by more than one (1) acre.

(b) The notice required by subsection (a) must include the following:

(1) Not more than ten (10) working days after submitting an

application, an applicant shall make a reasonable effort to notify the owners of record of adjoining land to the solid waste land disposal facility or proposed solid waste land disposal facility.

(2) The notice provided by the applicant in this subsection must:

(A) be in writing;

(B) include the date on which the application for the permit was submitted to the department; and

(C) include a brief description of the subject of the application.

(c) A public meeting must be conducted by the applicant submitting an application for the following:

(1) A new solid waste land disposal facility permit.

(2) A major modification to a solid waste land disposal facility permit.

(d) The applicant shall complete the following for the public meeting **as** required in subsection (c):

(1) Within sixty (60) days after the date the applicant received notification from the commissioner that the application has been deemed complete, conduct a public meeting in the county where the solid waste land disposal facility or major modification designated in the application ~~is~~ **will be** located.

(2) Publish notice of the public meeting ~~required in subdivision (1)~~ at least ten (10) days prior to the meeting in a newspaper of general circulation in the county where the solid waste land disposal facility or major modification will be located. The notice must:

(A) be at least two (2) columns wide by five (5) inches long;

(B) not be placed in the part of the newspaper where the legal notices and classified advertisements appear;

(C) include the time and date of the public meeting;

(D) state the exact place of the public meeting; and

(E) have every effort made by the applicant and the department to coordinate the publication date of the notice of the public meeting held by the applicant as required by this subdivision with the publication date of the notice of public hearing held by the department as required in subsection (i)(1).

(3) Conduct the public meeting as follows:

(A) Present a brief description of the location and operation of the proposed solid waste land disposal facility or major modification.

(B) Indicate where copies of the application have been filed.

(C) If the applicant proposes a design alternative, the applicant must briefly describe the alternative design.

(D) State that the department will accept written comments and questions from the public on the permit application and announce the address of the department and name of the person accepting comments on behalf of the department.

(E) Provide fact sheets on the proposed solid waste land disposal facility or major modification that have been prepared by the department for the public. A department representative shall attend the meeting.

(F) Offer the opportunity for public comments and questions.

(e) Within five (5) days after the date the applicant received notification from the commissioner that the application has been deemed complete by the department, the applicant shall place a copy of the complete application and any additional information that the department requests at a library in the county where the solid waste land disposal facility or major modification will be located.

(f) The applicant shall pay the costs of complying with subsections (c) through (e).

(g) Failure of the applicant to comply with subsections (c) through (f) may result in the denial of the application by the department.

(h) Public notice must be made by the department as required by ~~IC 5-3-1-2(h)~~ **IC 5-3-1-2(i)** after the date the applicant received notification from the commissioner that the permit application is deemed completed. The public notice must meet the following requirements:

(1) Indicate where copies of the application are available for public review.

(2) State that the department will accept comments from the public on the application for at least thirty (30) days.

(3) Offer the opportunity for a public hearing on the application.

(4) The department shall publish the notice in accordance with IC 5-3-1-6.

(5) If the facility boundary of the proposed solid waste land disposal facility or major modification, if also a lateral expansion, will be within one (1) mile of the county boundary, the department will publish the notice in accordance with IC 5-3-1-6 in the adjacent county.

(6) In addition to the requirements in IC 5-3-1-6, the department shall publish the notice in two (2) newspapers in the county where the solid waste land disposal facility or major modification is located, if there are two (2) newspapers of general circulation in the county.

(i) The department shall hold a public hearing ~~as~~ **if** required by IC 13-15-3-3. The following apply to a public hearing:

(1) The department shall publish notice of the hearing as required in IC 5-3-1 and IC 5-3-2 in newspapers of general circulation in the county where the solid waste land disposal facility (if a major modification) or proposed solid waste land disposal facility is located.

(2) During a hearing, a person may testify within the time provided or submit written comments, or both. The department will consider testimony that is relevant to the requirements of IC 13 and this article.

(Solid Waste Management Board; 329 IAC 10-12-1; filed Mar

14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2756; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3792; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1804, eff Apr 1, 2004)

SECTION 47. 329 IAC 10-13-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-13-1 Issuance procedures; original permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11; IC 13-12; IC 13-13; IC 13-14-8; IC 13-16; IC 13-17; IC 13-19; IC 13-20; IC 13-21; IC 13-22; IC 13-23; IC 13-24; IC 13-25; IC 13-26; IC 13-27; IC 13-27.5; IC 13-29; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The department shall comply with the procedural requirements of IC 13-15-3, IC 13-15-5, and IC 13-15-6 pertaining to public notice, public comment, and public hearing for an application for ~~an original~~ **a** permit for a solid waste land disposal facility regulated under IC 13-19-3.

(b) Subject to the provision of 329 IAC 10-11-1(c), if the department determines that the permit application meets the requirements of this article, and that the solid waste land disposal facility will be constructed and operated in accordance with the requirements of this article and the applicant is otherwise in compliance with the environmental statutes of Indiana, the permit will be granted. The department may impose such conditions in a permit as may be necessary to:

(1) comply with the requirements of this article, IC 13-11 through IC 13-30, and IC 36-9-30; or

(2) protect the public health ~~and~~ **or** the environment.

(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 department in the form and amount specified; and~~

~~(2)~~ the completion and execution of 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 such documentation necessary to evidence such transfer has been recorded and delivered to the department, or proof of the applicant's agreement regarding the leasing of this property has been submitted to the department.

~~(d) Notwithstanding subsection (c), a variance granted under IC 13-14-8 must not be transferred to another person without independent proof of undue hardship or burden by the person seeking transfer.~~ *(Solid Waste Management Board; 329 IAC 10-13-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1814; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3793; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1806, eff Apr 1, 2004)*

SECTION 48. 329 IAC 10-13-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-13-5 Transferability of permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-14-8; IC 13-15-7; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to a third 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 contract between the permittee and the third person containing a specific date of transfer of permit responsibility is submitted to the commissioner;

(3) the transferee has not been convicted under IC 13-30-6 or IC 36-9-30-35;

(4) the commissioner has not revoked under IC 13-15-7 a permit to the transferee that was issued under:

(A) this article;

(B) 329 IAC 1.5, which was repealed in 1989; or

(C) 329 IAC 2, which was repealed in 1996;

(5) the third person is, at the time of the application or permit decision, in compliance with the Environmental Protection Acts and ~~regulations~~ **rules** promulgated thereunder and does not have a history of repeated violations of the Acts or ~~regulations~~ **rules** or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit;

(6) the transferee provides proof **to the department** of financial responsibility under 329 IAC 10-39; and

(7) the transferee provides proof **to the department** that ~~it~~ **the transferee** is, or will be, the owner of the real property or provides proof of the applicant's agreement regarding the leasing of the property. ~~to the department.~~

(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,~~ **subsection (a)(1),** a variance **granted under IC 13-14-8** must not be transferred to another person **without independent proof of undue hardship or burden by the person seeking transfer.** *(Solid Waste Management Board; 329 IAC 10-13-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1806, eff Apr 1, 2004)*

SECTION 49. 329 IAC 10-13-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-13-6 Permit revocation and modification

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 4-21.5-3; IC 13-15-7-1; IC 13-15-7-3; IC 36-9-30

Sec. 6. (a) The commissioner may revoke or modify a permit issued under this article if cause exists under IC 13-15-7-1 and

may request an updated application if necessary. When a permit is modified, only the conditions ~~subject to modifications~~ **modified** are reopened and subject to review under ~~IC 13-15-7 and IC 4-21.5-3-7.~~ **IC 13-15-7-3.** 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) The commissioner may revoke a permit if the permit applicant is found by the department to have knowingly or intentionally falsified or supplied inaccurate information.~~

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

~~(d)~~ **(c)** To request a change in the solid waste land disposal facility plans or operation, the permittee must request that the commissioner modify the permit before any permitted changes are made in the approved plans. The application must provide the rationale for such modification to the commissioner for review. 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 modifications~~ **modified** are reopened. The commissioner shall give notice to the permittee of the determination on the modification in accordance with ~~IC 13-15-7 and IC 4-21.5-3-7.~~ **IC 4-21.5-3.**

~~(e)~~ **(d)** Other than for minor modifications, requests to modify a permit to increase the permitted acreage of the solid waste disposal area of a solid waste land disposal facility shall be processed in accordance with section 1 of this rule. *(Solid Waste Management Board; 329 IAC 10-13-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3794; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1806, eff Apr 1, 2004)*

SECTION 50. 329 IAC 10-14-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-14-1 Quarterly reports

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 24-6; IC 36-9-30

Sec. 1. (a) A quarterly tonnage report of solid waste received at the solid waste land disposal 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, a Sunday, or a national or state legal holiday, the submittal date will be the next day that is not a Saturday, a Sunday, or a national or state legal holiday.

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste land disposal facility that is open to accept solid waste for disposal unless the owner, operator, or permittee of the solid waste land disposal facility has ceased accepting solid waste for a period of at least one (1) calendar quarter, and has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 10-22-4, 329 IAC 10-30-6, or 329 IAC 10-37-6 as appropriate.

(d) The solid waste hauler shall provide the owner, operator, or permittee of the solid waste land disposal facility with the origin of the solid waste delivered to the solid waste land disposal 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 land disposal facility shall submit the quarterly tonnage report required by subsection (a) as follows:

(1) ~~On~~ **In** the most current paper ~~report form~~ **or electronic submittal format** prescribed by the ~~department.~~ **commissioner.** 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 land disposal facility; and

(B) in its most current format, may be computer generated by the owner, operator, or permittee of the solid waste land disposal facility.

(2) The original of each paper report must be signed by the solid waste land disposal 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).~~

~~(5) In addition to the paper report required in subdivision (1), an electronic report in a format approved by the commissioner may also be submitted.~~

~~(6)~~ **(4)** 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 solid waste land disposal 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 land disposal facility by the solid waste hauler as described in subsection (d).

(C) The type, total weight in tons, and final destination of

solid waste diverted from disposal for reuse or recycling after being received at the solid waste land disposal facility.

~~(D) The estimated remaining disposal capacity, in cubic yards, that is calculated by subtracting the existing fill volume as determined by the contour map required by 329 IAC 10-20-8(a)(6) from the design capacity.~~

~~(E) The estimated remaining solid waste land disposal facility life, in years, for the remaining disposal capacity.~~

~~(F)~~ **(D)** Waste types, including the following:

(i) Municipal solid waste.

(ii) Construction/demolition waste.

(iii) ~~Special~~ **Foundry** waste.

(iv) Coal ash.

(v) Flue gas desulfurization wastes.

~~(iv)~~ **(vi)** Other solid waste.

(f) If the owner, operator, or permittee of the solid waste land disposal facility ascertains that there is an error 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 an error.

(g) Copies of reports required by this section must be:

(1) ~~maintained on-site by the solid waste land disposal facility owner, operator, or permittee~~ **retained as specified under 329 IAC 10-1-4(b)** for three (3) years after the submittal date of the report; and

(2) made available during normal operating hours for ~~on-site~~ inspection and photocopying **or electronic copying** by a representative of the department.

(h) The solid waste land disposal facility owner, operator, or permittee shall maintain the documentation ~~on-site~~ to substantiate reports required by this section. Such documentation must be:

(1) ~~maintained by the solid waste land disposal facility owner, operator, or permittee~~ **retained as specified under 329 IAC 10-1-4(b)** for three (3) years after the ~~report's~~ submittal date **of the report;** and

(2) made available during normal operating hours for ~~on-site~~ inspection and photocopying **or electronic copying** 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 10-1-2.~~ **of this article.** *(Solid Waste Management Board; 329 IAC 10-14-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2759; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3795; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1807, eff Apr 1, 2004)*

SECTION 51. 329 IAC 10-15-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-15-1 General requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 25-17.6-1-6.5; IC 36-9-30

Sec. 1. (a) A permit application for a new MSWLF or a lateral expansion must be accompanied by the following plans and documentation:

(1) Plot plans as specified under section 2 of this rule.

(2) Cross-sectional drawings and details as specified under section 3 of this rule.

(3) A hydrogeologic site investigation report as specified under sections 4 and 5 of this rule.

(4) An operational plan of the proposed MSWLF as specified under section 6 of this rule.

(5) A CQA/CQC plan as specified under section 7 of this rule.

(6) Calculations and analyses pertaining to MSWLF design as specified under section 8 of this rule.

(7) An explosive gas management plan as specified under 329 IAC 10-20-17.

(8) A closure plan as specified under 329 IAC 10-22-2.

(9) A post-closure plan, as specified under 329 IAC 10-23-3.

(10) A quality assurance project plan as specified under 329 IAC 10-21-2(b)(13).

(11) A sampling and analysis plan as specified under 329 IAC 10-21-2.

(12) A general description for developing ~~a~~ **the** statistical evaluation plan ~~as~~ **that is** required by 329 IAC 10-21-6(c). The description must include a time frame for submitting the statistical evaluation plan.

(13) If applicable, a baled waste management plan as specified under section 9 of this rule.

(14) A leak detection plan as specified under section 10 of this rule.

(15) A leachate collection contingency plan as specified under section 11 of this rule.

(16) A storm water pollution prevention plan as specified under section 12 of this rule.

~~(16)~~ **(17)** Other plans as may be required by the commissioner **based on particular site or facility conditions.**

(b) Plans and documentation that accompany a permit application for a new MSWLF or a lateral expansion must be certified as follows:

(1) The hydrogeologic site investigation report required in subsection (a)(3) must be certified by a ~~certified~~ **licensed** professional geologist or a qualified ground water scientist, either of whom shall have educational or professional experience in hydrogeology or ground water hydrology.

(2) With the exception of the hydrogeologic site investigation report and the sampling and analysis plan, all plans and documentation required in subsection (a) must be certified by a registered professional engineer.

(c) A full set of plans and documentation required by this section

must accompany each of the five (5) copies of the permit application required in 329 IAC 10-11-2.1(c). ~~In addition to the paper copies, a copy of the plans and documentation required by this section may also be submitted on a computer diskette, the type and format of which will be prescribed by the department.~~

(d) All plans and documentation must be properly titled. *(Solid Waste Management Board; 329 IAC 10-15-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1817; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2760; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3797; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1808, eff Apr 1, 2004)*

SECTION 52. 329 IAC 10-15-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-15-2 Plot plan requirements

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

Sec. 2. (a) Plot plans required by subsections (b) through (d) must:

(1) use a scale of at least one (1) inch per one hundred (100) feet for a MSWLF of less than eighty (80) acres;

(2) use a scale of at least one (1) inch per two hundred (200) feet, for a MSWLF of eighty (80) acres to and including one hundred fifty (150) acres;

(3) use a scale of at least one (1) inch per three hundred (300) feet for an MSWLF greater than one hundred fifty (150) acres;

(4) include a bar scale on each drawing;

(5) include elevations that correlate with United States Geological Survey (USGS) mean sea level data;

(6) include a north arrow; and

(7) include a map legend.

(b) A permit application for a new MSWLF or a lateral expansion must be accompanied by an existing features plot plan that includes the facility boundary, and the solid waste boundary and indicates the presence or absence of each of the following features within **the facility boundary. The presence or absence of features listed in subdivisions (1) through (9) must also be indicated to** three hundred (300) feet **outside** of the facility boundary:

(1) Location and elevations of all existing boreholes.

(2) Rock outcroppings.

(3) Surface water run-off directions.

(4) Fences.

(5) Utility easements and rights-of-way.

(6) Existing structures.

(7) Benchmark descriptions.

(8) Surface contours with intervals of no more than:

(A) two (2) feet if the MSWLF is less than eighty (80) acres; or

(B) five (5) feet if the MSWLF is equal to or greater than eighty (80) acres.

(9) Real property boundary.

(10) All existing and historical underground or above-ground storage tank locations.

(11) All existing and historical outdoor storage areas for fuels, processing equipment, and other containerized materials, such as drums and totes.

(c) The proposed final contour plot plan required by subsection (d)(1) must indicate surface contours of the MSWLF and three hundred (300) feet beyond the facility boundary. The contour intervals must be no more than:

(1) two (2) feet if the MSWLF is less than eighty (80) acres; or

(2) five (5) feet if the MSWLF is equal to or greater than eighty (80) acres.

(d) A permit application for a new MSWLF or a lateral expansion must be accompanied by plot plans showing the following:

(1) Proposed final contours, indicating the following features that would remain after closure:

(A) Any buildings.

(B) Proposed drainage.

(C) Proposed sedimentation and erosion control structures.

(D) Proposed vegetation, fencing, and visual screening.

(E) Proposed roadways providing access to and around the site that are necessary for post-closure care and monitoring.

(F) Proposed berms, flood protection dikes, and surface water diversion structures.

(G) Proposed explosive gas monitoring and management system.

(H) Proposed solid waste boundary.

(I) Proposed monitoring wells.

(2) Proposed leachate collection system, indicating the following:

(A) Proposed ~~soil liner top~~ **uppermost** contour **of the soil liner.**

(B) Piping layout.

(C) Cleanout and riser locations.

(D) Sump contours or elevations if applicable.

(E) Lift station locations if applicable.

(F) Leachate storage areas if applicable.
~~applicable.~~

(3) Initial facility development plan and details, indicating the following:

(A) Proposed benchmarks.

(B) Proposed buildings and on-site transfer.

(C) Proposed drainage, including permanent sedimentation and erosion control structures, **including typical details for temporary erosion structures.**

(D) Proposed explosive gas monitoring and management system.

(E) Proposed fencing and visual screening.

(F) Proposed on-site roads.

(G) Proposed **uppermost contour of the** soil liner. ~~top contours.~~

(H) ~~On-site~~ Borrow area for soil liner material and daily

cover if applicable.

(I) Delineation of other construction activities within the real property boundary of the landfill.

(4) Operational plot plan indicating the sequence of cell development, and indicating the following:

(A) Additional proposed benchmarks, if applicable.

(B) Additional proposed buildings, if applicable.

(C) Additional drainage features and permanent erosion and sediment control features, **including typical details for temporary erosion structures.**

(D) Additional fencing and visual screening.

(E) Proposed on-site roads.

(F) Direction of fill progression.

(G) An outline of impervious surfaces, which includes pavement and buildings.

(H) All permanently designated plowed or snow storage locations.

(I) All loading and unloading areas for solid and liquid bulk materials.

(J) All proposed outdoor storage areas for fuels, processing equipment, and other containerized materials, such as drums and totes.

(K) Outdoor processing areas.

(L) Outdoor waste storage areas.

(5) Any other plot plan that ~~may be determined to be required by~~ the commissioner **may require based on particular site or facility conditions.**

(Solid Waste Management Board; 329 IAC 10-15-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1818; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3797; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1809, eff Apr 1, 2004)

SECTION 53. 329 IAC 10-15-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-15-5 Description of proposed ground water monitoring well system

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

Sec. 5. (a) The hydrogeologic site investigation report that accompanies permit applications for new MSWLFs and lateral expansions must contain a description of the proposed **ground water** monitoring well system that, at a minimum, includes the following information:

(1) Monitoring point locations, design, and installation procedures. Installation procedures must comply with 329 IAC 10-21-4.

(2) A thorough evaluation of the suitability of any existing monitoring points proposed for inclusion in the **ground water** monitoring well system.

(3) An explanation of how the proposed **ground water** monitoring well system addresses the hydrogeologic conditions identified within the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system.

(4) A description of how and where ground water monitoring wells will be installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer and any significant zones of saturation that exist above the uppermost aquifer system. Ground water samples must represent both the quality of background ground water ~~quality~~ that has not been affected by the proposed MSWLF unit and **quality of** ground water quality passing the monitoring boundary of the proposed MSWLF unit.

(5) A description of how ~~upgradient~~ **background ground water monitoring** wells will monitor the same hydrologic units as the downgradient **ground water** monitoring wells.

(6) If a single monitoring well cannot adequately intercept and monitor the vertical extent of a potential pathway of contaminant migration at a sampling location, a description of how a **ground water monitoring** well cluster will be installed.

(7) For the uppermost aquifer system, a description of how ground water monitoring well spacing will not exceed five hundred (500) feet along the monitoring boundary of the proposed MSWLF unit. In geologically complex environments as determined by the commissioner, closer **monitoring** well spacing may be required. Alternate spacing of ground water monitoring wells ~~must~~ **may** be approved by the commissioner **based on particular site or facility conditions. Monitoring** well spacing must provide at least two (2) ~~upgradient~~ **background ground water monitoring wells** and four (4) downgradient monitoring wells or well clusters within the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system. An alternate number of ~~upgradient~~ **background** wells ~~must~~ **may** be approved by the commissioner **based on particular site or facility conditions.**

(b) The commissioner may consider an individual compliance **ground water** monitoring well system for intrawell statistical comparison methods if the permittee can demonstrate either of the following:

(1) The uppermost aquifer system, and any significant zones of saturation that exist above the uppermost aquifer system are discontinuous.

(2) Significant spatial variability exists within the aquifer.

(Solid Waste Management Board; 329 IAC 10-15-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1823; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2765; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3804; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1810, eff Apr 1, 2004)

SECTION 54. 329 IAC 10-15-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-15-8 Calculations and analyses pertaining to landfill design

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

Sec. 8. (a) The applicant shall provide calculations and

analyses pertaining to the design of the proposed MSWLF unit, if applicable, and if necessary as determined by the commissioner, to indicate that the proposed design complies with the design requirements of 329 IAC 10-17. Any required calculations must be accompanied by a discussion of methods, assumptions, and the references used. Calculations that may be required include the following:

(1) A transmissivity, **in plane hydraulic conductivity,** calculation or an assessment based on the maximum compressive load placed above the geosynthetic, using a minimum safety factor of ten (10), when a geosynthetic material is used for the drainage layer. In addition, the long term creep impact on the transmissivity of the geosynthetic must be evaluated using a minimum safety factor of five (5).

(2) A permitivity, **cross-plane hydraulic conductivity,** calculation using a minimum factor of safety of fifty (50), when a geosynthetic material is used for the drainage layer.

(3) A filter-retention calculation **or assessment** when a geosynthetic material is used for the drainage layer.

(4) A tensile stresses calculation to evaluate stresses generated during the construction and operation of the interior of the side slope of the proposed MSWLF unit. A minimum safety factor of five (5) on yield is required.

~~(5) A strain-settlement calculation to evaluate the ability of the geosynthetic layer to resist down-drag forces resulting from the subsidence of the contained waste. A minimum ultimate safety factor of one and one-half (1.5) on ultimate stress is required.~~

~~(6)~~ **(5)** A filter-clogging calculation to evaluate the influence of retained soil particles on the permitivity of a geotextile or geonet. Also, a gradient ratio test or a hydraulic conductivity ratio test, as appropriate, must be performed in accordance with test standards specified in 329 IAC 10-17-17.

~~(7)~~ **(6)** A localized subsidence calculation, if applicable, to evaluate the strains induced in the geomembrane used for the liner system and for final cover.

~~(8)~~ **(7)** A stability of final cover calculation to evaluate the likelihood and extent to which final cover components may slide with respect to each other. A minimum safety factor ~~of one and three-tenths (1.3)~~ **as outlined in Table 1 of this section** is required.

~~(9)~~ **(8)** A ~~geomembrane~~ **geosynthetic** anchor **or pull-out anchorage** calculation **or assessment** to evaluate the anchoring capacity and stresses in a geomembrane. A minimum safety factor of one and two-tenths (1.2) is required. **An anchor must provide sufficient restraint to hold a geosynthetic liner in place, but should not be so rigid or strong that the geosynthetic liner will tear before the anchor yields.**

~~(10)~~ **(9)** A settlement potential calculation to estimate the total and differential settlement of the foundation soil due to stresses imposed by the liner system, in-place waste, daily cover, intermediate cover, equipment usage, and final cover.

~~(11)~~ **(10)** A bearing capacity and stability calculation to estimate the load bearing capacity and slope stability of the foundation soil during construction. A minimum safety factor of two (2.0) is required for a static condition.

~~(12) A bottom heave and blow-out calculation to estimate the potential for a bottom heave or blow-out due to unequal hydrostatic or gas pressure.~~

(11) The uplift pressure or hydrostatic pore water pressure must be evaluated based on site-specific conditions.

~~(13)~~ **(12)** A waste settlement analysis to assess the potential for the final cover system to stretch due to total and differential settlement of the solid waste. If there is a lack of documented settlement of the solid waste, a value of approximately seven percent (7%) to fifteen percent (15%) of the solid waste height may be used for this calculation.

~~(14)~~ **(13)** A wind uplift force calculation **or an assessment** to provide an indication that wind uplift will not damage the geomembrane during installation.

~~(15)~~ **(14)** A wheel loading calculation to indicate that the amount of wheel loading of construction equipment will not damage the liner system.

~~(16)~~ **(15)** A puncture of geomembrane calculation to indicate that the amount of down drag force induced by the leachate collection sumps and manhole with vertical standpipe settlement will not cause failure of the underlying liner system. A minimum safety factor of two (2.0) on tensile strength at yield is required.

~~(17)~~ **(16)** An erosion calculation to indicate that the erosion rate will not exceed five (5) tons per acre per year, as is required under 329 IAC 10-22-7(c)(3).

~~(18)~~ **(17)** Pipe calculations to assess the leachate collection piping for deflection, buckling, and crushing.

~~(19)~~ **(18)** If applicable, or if required under 329 IAC 10-16-5(b), an analysis of the effect of seismic activity on the structural components of the landfill.

~~(20)~~ **(19)** A peak flow calculation to identify surface water flow expected from a twenty-five (25) year storm.

~~(21)~~ **(20)** A calculation to identify the total run-off volume expected to result from a **twenty-five (25) year,** twenty-four (24) hour ~~twenty-five (25) year storm~~ **precipitation** event.

~~(22)~~ **(21)** A chemical resistance evaluation to demonstrate that the leachate collection and removal system components are chemically resistant to the waste and the leachate expected to be generated.

~~(23)~~ **(22)** A clogging evaluation to demonstrate that the system as designed will be resistant to clogging throughout the active life and post-closure period of the MSWLF.

~~(24)~~ **(23)** A slope stability analysis that follows the requirements outlined in Table 1 of this subdivision. Any geosynthetic materials installed on landfill slopes must be designed to withstand the calculated tensile forces acting upon the geosynthetic materials. The design must consider the minimum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface.

TABLE 1
Minimum Values of Safety Factors for
Slope Stability Analyses **for Liner and Final Cover Systems**

	Uncertainty of Strength Measurements	
Consequences of Slope Failure	Small[1]	Large[2]
No imminent danger to human life or major environmental impact if slope fails	1.25 (1.2)*	1.5 (1.3)*
Imminent danger to human life or major environmental impact if slope fails	1.5 (1.3)*	2.0 or greater (1.7 or greater)*

[1]The uncertainty of the strength measurements is smallest when the soil conditions are uniform and high quality strength test data provide a consistent, complete, and logical picture of the strength characteristics.

[2]The uncertainty of the strength measurements is greatest when the soil conditions are complex and when the available strength data do not provide a consistent, complete, and logical picture of strength characteristics.

*Numbers without parentheses apply ~~for~~ **to** static conditions and those within parentheses apply to seismic conditions.

~~(25)~~ **(24)** Any additional calculation determined by the commissioner to be necessary to ascertain whether the proposed design complies with the requirements of this article.

(b) Test standards for MSWLF liner systems are listed in 329 IAC 10-17-17. *(Solid Waste Management Board; 329 IAC 10-15-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1825; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2767; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3806; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1810, eff Apr 1, 2004)*

SECTION 55. 329 IAC 10-15-12 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-15-12 Storm water pollution prevention plan

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

Sec. 12. (a) This section applies to the requirements of implementing a storm water pollution prevention plan (SWP3) at an MSWLF.

(b) The SWP3 must:
(1) identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility;
(2) describe implementation of practices and measures that will be used to reduce pollutants in storm water discharges from the facility; and
(3) assure compliance with this article.

(c) The SWP3 must, at a minimum, contain the following information:
(1) Identification, by title, of staff on the facility's storm water pollution prevention team and their responsibilities.
(2) A site description and map of the facility describing or showing a description of the planned construction and landfill operational activities.

(d) The SWP3 must include a written spill response program to include the following information:
(1) Location, description, and quantity of all response materials and equipment.
(2) Response procedures for facility personnel to respond to a release.
(3) Contact information for reporting spills, both for facility staff and external emergency response entities.
(4) All corrective actions that will be taken for spills found during inspections, testing, and maintenance must be documented and included in the SWP3.

(e) The SWP3 must include a narrative description of potential pollutant sources, including descriptions for any existing or historical areas, and any other areas thought to be a potential source of storm water exposure to pollutants. The narrative descriptions for the facility must include the following:
(1) Type and typical quantity of materials that are potential pollutant sources present at the facility.
(2) Methods of storage, including presence of any secondary containment measures.
(3) Any remedial actions undertaken at the facility to eliminate pollutant sources or exposure of storm water to those sources. If a corrective action plan has been developed, the type of remedial action and plan date shall be referenced.
(4) Any release or spill history, at the facility, dating back a period of three (3) years from the date of the pollution prevention plan for materials spilled outside of secondary containment structures and impervious surfaces in excess of the materials' reportable quantity or twenty-five (25) gallons, whichever is less, including the following:
(A) The date and type of material released or spilled.
(B) The estimated volume released or spilled.
(C) A description of the remedial actions undertaken, including disposal or treatment.
Depending on the adequacy or completeness of the remedial actions, the spill history shall be used to determine additional pollutant sources that may be exposed to storm water.
(5) The descriptions for the facility must include a risk identification analysis of chemicals or materials that are potential pollutant sources and stored or used within the facility. The analysis must include the following:
(A) Toxicity data of chemicals or materials used within the facility, referencing appropriate Material Safety Data Sheet information locations.
(B) The frequency and typical quantity of listed chemicals or materials being stored on site.

(C) Potential ways in which storm water discharges may be exposed to listed chemicals and materials.

(D) The likelihood of the listed chemicals and materials coming into contact with storm water.

(6) A narrative description of existing and planned management practices and measures to improve the quality of storm water run-off, impacted by activities at the facility, that leaves the facility boundary or enters waters of the state. Descriptions must be created for existing or historical areas and any other areas that could generate storm water discharges that have been exposed to facility activity and therefore be a potential source of storm water exposure to pollutants. The description must include the following:

(A) Any existing or planned structural and nonstructural control practices and measures.

(B) Any treatment the storm water receives prior to leaving the facility boundary or entering waters of the state.

(C) The ultimate disposal of any solid or fluid wastes collected in structural control measures other than by discharge.

(7) A mapped or narrative description of any such management practice or measure must be added to the SWP3.

(f) The owner, operator, or permittee shall submit with the SWP3 the following:

(1) The results of monitoring required in 329 IAC 10-20-11(f) of this article. For new facilities and lateral expansions, the results of monitoring shall be submitted one (1) year after the issuance of the MSWLF permit.

(2) The monitoring data must include:

(A) completed field data sheets;

(B) chain-of-custody forms; and

(C) laboratory results.

If the monitoring data is not placed into the facility's SWP3, the on-site location for storage of the information must be referenced in the SWP3.

(3) If the evaluation of monitoring data, as required by 329 IAC 10-20-11(g)(2), indicates that the SWP3 has been ineffective in controlling pollutants in storm water discharges from the facility, the commissioner may require modifications to the SWP3. The source of the pollutant parameter must be investigated and either eliminated or reduced via a management practice or measure to the extent technologically practicable. Insufficient reductions may be used to identify facilities that would be more appropriately covered under an individual storm water NPDES permit.

(4) A mapped or narrative description of any management practice or measure pursuant to subdivision (3) must be included in the SWP3.

(g) The SWP3 must include a written preventative maintenance program in order to minimize storm water exposure to pollutants. The program must include the following:

(1) Implementation of good housekeeping practices to ensure the facility will be operated in a clean and orderly manner and that pollutants will not have the potential to be exposed to storm water via vehicular tracking or other means.

(2) Maintenance of storm water management measures, for example, catch basins or the cleaning of oil/water separators. All maintenance must be documented and contained in the SWP3.

(3) Inspection and testing results of facility equipment and systems, including spill response equipment as required by subsection (d), to ensure appropriate maintenance of such equipment and systems and to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface water.

(Solid Waste Management Board; 329 IAC 10-15-12; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1812, eff Apr 1, 2004)

SECTION 56. 329 IAC 10-16-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-16-1 Airport siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) This section applies to:

(1) permit applications under this article for new MSWLFs and lateral expansions; or

(2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article must not locate a proposed MSWLF unit within ten thousand (10,000) feet of any airport runway end used by turbojet aircraft or within five thousand (5,000) feet of any airport runway end used by only piston-type aircraft unless the permit application includes a demonstration that the proposed MSWLF unit is designed and operated so as not to pose a bird hazard to aircraft.

(c) Permittees of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, located within ten thousand (10,000) feet of any airport runway end used by turbojet aircraft or within five thousand (5,000) feet of any airport runway end used by only piston-type aircraft must complete the following:

(1) A demonstration that any MSWLF unit within the MSWLF is designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(2) Provide a copy of the demonstration to the commissioner.

(3) Provide a copy of the demonstration to the affected airport.

(d) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article or permittees of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must complete the following if any proposed or existing MSWLF unit within the MSWLF is located within a five (5) mile radius of any airport runway end used by turbojet or piston-type aircraft:

(1) Notification to the affected airport and the Federal Aviation Administration (FAA) of the intent to site a solid waste land disposal facility.

(2) If a demonstration is required by this section, provide a copy of the demonstration to the affected airport.

(e) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration.

(f) A new MSWLF must not be permitted within six (6) miles of a public airport as specified under 49 U.S.C. Sec. 44718 unless the MSWLF permittee has been granted an exemption under 49 U.S.C. Sec. 44718. An MSWLF permittee that has been granted an exemption under 49 U.S.C. Sec. 44718 must comply with:

(1) subsection (b);

(2) subsection (d);

(3) both *[subsections]* **(b) and (d), if applicable.**

(Solid Waste Management Board; 329 IAC 10-16-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1826; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2769; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3807; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1813, eff Apr 1, 2004)

SECTION 57. 329 IAC 10-16-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-16-8 Karst terrain siting restrictions

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

Sec. 8. (a) This section applies to ~~(1) permit applications under this article for~~ **all proposed** new **or permitted** MSWLFs. ~~and lateral expansions; or (2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.~~

(b) ~~Applicants for~~ **A** new ~~MSWLFs, and lateral expansions, that are applying for a permit under this article, and for new MSWLFs, and lateral expansions, permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not locate any~~ MSWLF unit ~~within the new MSWLFs or lateral expansions~~ **must not be located** in or over karst terrains.

(c) MSWLF units permitted and constructed under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not be located in or over karst terrains without provisions to collect and contain all of the leachate generated by the MSWLF units and without a demonstration that the integrity of the MSWLF units will not be damaged by subsidence.

(d) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. *(Solid Waste Management Board; 329 IAC 10-16-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1829; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2772; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3810; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1814, eff Apr 1, 2004)*

SECTION 58. 329 IAC 10-17-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-17-2 Overview of liner designs and criteria for selection of design

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

Sec. 2. (a) The following liner design is required for any section of a new MSWLF unit within an MSWLF or lateral expansion to be permitted under this article that will not be located over an aquifer of significance, as defined under 329 IAC 10-2-13, or will be located over an aquifer of significance, but there is a continuous layer of at least ten (10) feet of nonaquifer material, as defined under 329 IAC 10-2-120, separating the base of the proposed soil liner and the uppermost portion of the aquifer:

(1) At the base and side slopes, starting from the subgrade and extending upward, the liner must include the following components:

(A) A minimum of three (3) feet of compacted soil, having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

(B) A geomembrane.

(C) A drainage layer.

(D) A protective cover.

(2) At all sump areas, ~~and,~~ at a minimum, ~~at~~ **the** liner ~~areas within twenty-five (25) feet lateral to the center of each~~ **must extend ten (10) feet from the outermost edge of the designated** sump **boundary on all sides.** Starting from the subgrade and extending upward, the liner must include the following components:

(A) A minimum of two (2) feet of compacted soil, having a hydraulic conductivity of 1×10^{-6} centimeters per second or less.

(B) A leak detection zone. The leak detection zone must meet the applicable requirements in this section and sections 8, 9, and 13 through 16 of this rule for drainage layers.

(C) A minimum of three (3) feet of compacted soil having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

(D) A geomembrane.

(E) A geosynthetic clay liner.
(F) A geomembrane.
(G) A drainage layer.
(H) A protective cover.

(b) The following liner design is required for any section of a new MSWLF unit or lateral expansion within an MSWLF to be permitted under this article that will be located over an aquifer of significance, as defined under 329 IAC 10-2-13, and there is not a continuous layer of at least ten (10) feet of nonaquifer material, as defined under 329 IAC 10-2-120, separating the base of the proposed soil liner and the uppermost portion of the aquifer:

(1) At the base and side slopes, starting from the subgrade and extending upward, the liner must include the following components:

(A) A minimum of two (2) feet of compacted soil, having a hydraulic conductivity of 1×10^{-6} centimeters per second or less. This component must extend up the side slope of the proposed MSWLF unit to a height at least two (2) feet above the highest temporal fluctuation of the ground water table, as determined from the hydrogeologic site investigation required under 329 IAC 10-15-4.

(B) A drainage layer. This component must extend up the side slope of the proposed MSWLF unit to a height at least two (2) feet above the highest temporal fluctuation of the ground water table, **but not closer than five (5) feet from the ground surface,** as determined from the hydrogeologic site investigation required under 329 IAC 10-15-4.

(C) A minimum of three (3) feet of compacted soil having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

(D) A geomembrane.

(E) A drainage layer.

(F) A protective cover.

(2) At all sump areas, ~~and,~~ at a minimum, ~~at~~ **the** liner ~~areas within twenty-five (25) feet lateral to the center of each~~ **must extend ten (10) feet from the outermost edge of the designated** sump **boundary on all sides.** Starting from the subgrade and extending upward, the liner must incorporate the design components described in subsection (a)(2).

(c) For the purposes of this rule, sump areas are considered to be those areas of the proposed MSWLF unit that are designed to collect and remove leachate where leachate is expected to accumulate to a depth of at least one (1) foot.

(d) The minimum distance for extension of liner design components related to sump areas may be increased at the discretion of the commissioner, depending on site-specific factors, with consideration of the highest temporal fluctuations of the ground water table at the site.

(e) The commissioner may make available to the applicant standardized municipal solid waste landfill designs that are not less stringent than the requirements of this rule. *(Solid Waste Management Board; 329 IAC 10-17-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1831; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2774; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3813; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1814, eff Apr 1, 2004)*

SECTION 59. 329 IAC 10-17-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-17-7 Geomembrane component of the liner; construction and quality assurance/quality control requirements

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

Sec. 7. (a) Before geomembrane field construction, the project engineer shall review documentation of quality control testing as follows:

(1) In a review of the testing of raw materials used to manufacture the geomembrane, the project engineer shall do the following:

(A) Ensure that the quality control testing meets the specifications of the approved construction plan.

(B) Review copies of the origin and identification of the raw materials.

(C) Review copies of quality control certificates issued by the producers of the raw materials. The certificates must be accompanied by results of the following tests unless a particular test requirement is waived by the commissioner **based on particular site or facility conditions:**

(i) Density test.

(ii) Melt flow index test.

(iii) Any other test deemed necessary by the commissioner to verify raw material quality.

(2) In a review of the testing documentation of the geomembrane rolls that are fabricated into geomembrane, the project engineer shall do the following:

(A) Check the manufacturer's certified quality control documentation to verify that the geomembrane was continuously inspected during the manufacturing process for the following:

(i) Lack of uniformity.

(ii) Damage.

(iii) Imperfections.

(iv) Holes.

(v) Cracks.

(vi) Thin spots.

(vii) Foreign materials.

(B) Ensure that any imperfections discovered during inspection were repaired and then reinspected, either at the manufacturing facility or on-site at the MSWLF.

(C) Review the results of **manufacturer's** quality control tests ~~conducted on the finished product by the geomembrane manufacturer.~~ **for conformance with project specifications.** These tests must include, at a minimum, the following:

(i) ~~Single point~~ Stress ~~rupture~~ **crack resistance** test.
(ii) Tensile strength test.
(iii) Tear and puncture resistance test.
(iv) Oxidative induction time (OIT) at:
(AA) standard OIT; or
(BB) high pressure OIT.
(v) Ultraviolet resistance at high pressure OIT.
~~(iv)~~ **(vi)** Any other test deemed necessary by the commissioner to verify ~~finished product~~ quality.

(3) The project engineer shall ensure that manufacturer quality control testing of the raw materials and of the finished geomembrane product was conducted:
(A) as required in the approved construction plans; or
(B) as otherwise required by the commissioner **based on particular site or facility conditions.**

(b) During geomembrane field construction, the project engineer shall ensure the following:
(1) The geomembrane is installed on supporting soil that is reasonably free of the following:
(A) Stones.
(B) Organic material, except that organic material naturally occurring in the soil.
(C) Irregularities.
(D) Protrusions.
(E) Loose soil or soft spots.
(F) Standing water.
(G) Any abrupt change in grade that could damage the geomembrane.
(2) All aspects of geomembrane installation are carried out in accordance with the following:
(A) The approved construction plan.
(B) The manufacturer's recommendations.
(C) The design standards described under section 6 of this rule.
(D) Any additional requirements necessary to obtain adequate geomembrane liner construction and installation, as specified in the construction plans or as determined by the commissioner **to assure the quality of the geomembrane liner.**
(3) The anchor trench is excavated to the length and width prescribed in the approved construction plans.
(4) Field seaming is conducted as follows:
(A) To meet the requirements for design of the geomembrane component of the liner as described under section 6 of this rule.
(B) In a manner that leaves seams free of the following:
(i) Dust.
(ii) Dirt.
(iii) Moisture.
(iv) Debris.
(v) Foreign material of any kind.
(C) Using an appropriate method consistent with:
(i) the approved construction plan; or
(ii) a method otherwise approved by the commissioner **based on equivalent environmental protection.**
(D) At a time when the following conditions exist, unless otherwise approved by the commissioner **based on particular site or facility conditions,** or project engineer, or otherwise recommended by the manufacturer:
(i) Air temperature is at least thirty-two (32) degrees Fahrenheit but does not exceed one hundred twenty (120) degrees Fahrenheit.
(ii) Sheet temperature is at least thirty-two (32) degrees Fahrenheit but does not exceed one hundred fifty-eight (158) degrees Fahrenheit.
(iii) Wind gusts are not in excess of twenty (20) miles per hour.
(5) Quality assurance and quality control testing conducted in the field conforms with requirements of the approved construction plan and includes the following:
(A) A sample is taken from each lot number of geomembrane material that arrives on site and is tested in the following manner for the purpose of fingerprinting the material:
(i) Thickness of the sample must be measured at a rate of five (5) measurements per roll of geomembrane, at locations evenly distributed throughout the roll.
(ii) The following tests must be conducted at a rate of either once per lot or once per fifty thousand (50,000) square feet of geomembrane:
(AA) Tensile characteristics test for strength and elongation at yield and at break.
(BB) Carbon black content test.
(CC) Carbon black dispersion test, if applicable.
(DD) Any additional tests that are necessary as determined by the commissioner **to demonstrate the integrity of the geomembrane.**
(B) Visual inspections of the geomembrane material, followed by appropriate repairs and reinspections, are made for:
(i) lack of uniformity;
(ii) damage;
(iii) imperfections;
(iv) tears;
(v) punctures;
(vi) blisters; and
(vii) excessive folding.
(C) Test seams for shear strength and peel strength are made as follows:
(i) At the start of each work period for each seaming crew.
(ii) After every four (4) hours of continuous seaming.
(iii) Every time seaming equipment is changed.
(iv) When significant changes in geomembrane temperature, as determined by the project engineer or by manufacturer recommendation, are observed.
(v) As required in the approved construction plan.
(vi) As may be required by the commissioner.
(D) Nondestructive seam testing proceeds as follows:

(i) Testing is performed on all seams over their full length using a test method:

(AA) in accordance with the approved construction plans;

(BB) in accordance with section 17 of this rule; or

(CC) otherwise acceptable to the commissioner **as an equivalent test method.**

(ii) Testing is monitored by the project engineer, and seaming and patching operations are inspected for uniformity and completeness.

(iii) Results of testing are recorded by the project engineer in records that include the following information:

(AA) The location of the seam test.

(BB) The test unit number.

(CC) The name of the person conducting the test.

(DD) The results of all tests.

(EE) Any other information that may be necessary to judge the adequacy of the seaming and patching procedures.

(E) Geomembrane seams that cannot be nondestructively tested are overlain with geomembrane material of identical type.

(F) Destructive seam testing is performed at the site, or at an independent laboratory, according to the approved construction plans, and meets the following requirements:

(i) Testing is performed:

(AA) on a minimum of one (1) test per five hundred (500) feet of seam length if the seam is welded with a fusion weld; **and**

(BB) on a minimum of one (1) test per four hundred (400) feet of seam length if the seam is welded with an extrusion weld; **and**

(CC) on a minimum of one (1) test for each seaming machine; ~~and~~ **or**

(DD) as otherwise required by the commissioner **based on a testing frequency that will result in equivalent environmental protection.**

(ii) Destructive seam testing includes:

(AA) a shear strength test; and

(BB) a peel strength test.

(iii) If a seam location fails destructive testing:

(AA) the seam is reconstructed over a minimum of ten (10) feet in each direction from the site of the failed test;

(BB) additional samples are taken for testing; and

(CC) reconstruction and retesting is repeated, as necessary, until at least eighty percent (80%) of the samples at the test location pass the destructive seam test.

(Solid Waste Management Board; 329 IAC 10-17-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1834; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2776; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3815; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1815, eff Apr 1, 2004)

SECTION 60. 329 IAC 10-17-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-17-9 Drainage layer component of the liner; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-20-2; IC 36-9-30

Sec. 9. (a) If the drainage layer material is to consist of soil or soil like materials, the project engineer shall ensure the following:

(1) A grain size analysis and hydraulic conductivity test is completed **during the installation** for soil drainage layer materials at frequencies described in Table 1 of this subsection.

(2) The quality control and quality assurance testing of the soil drainage material meets the requirements of the approved construction plans.

(3) The soil drainage layer is constructed and graded in accordance with the approved construction plans.

(4) Carbonate content testing must be performed prior to and during the installation of a drainage layer, if the drainage material is limestone ($CaCO_3$) or dolomite/dolostone (Ca-Mg $(CO_3)_2$) or from a source likely to contain a high percentage of carbonate materials. The test must be performed:

(A) at a pH of less than seven (7); and

(B) at every three thousand (3,000) cubic yards.

The test results must show a carbonate content no greater than fifteen percent (15%). Higher carbonate content may be allowed in drainage layer materials if a demonstration is submitted showing that the hydraulic conductivity of the drainage layer will not be decreased below the minimum of 10^{-1} centimeters per second because of carbonate mineral precipitation.

TABLE 1

Soil Drainage Layer Materials:

Minimum Testing Frequencies

Item Tested	Minimum Frequency
Grain size (to the No. 200 sieve)	1 test per 1,500 cubic yards (2,400 per ton)
Hydraulic conductivity test	1 test per 3,000 cubic yards (4,800 per ton) or minimum of 3 tests

(b) If the drainage layer material is to consist of a geosynthetic material, the project engineer shall ensure the following:

(1) The geosynthetic drainage layer material is chemically compatible with the waste to be deposited and with the leachate that will be generated.

(2) Effective liquid removal will be maintained by the drainage layer throughout the active life, closure and post-closure period of the MSWLF.

(3) The geosynthetic drainage layer is constructed and installed in accordance with the approved construction plans.

(4) The quality control and quality assurance testing of the geosynthetic drainage material meets the requirements of the approved construction plans.

(5) Results of the following tests, or equivalent tests where applicable to a specific product, and the following criteria are adequately addressed:

(A) If the geosynthetic material is a geotextile:

(i) grab elongation test;
(ii) grab tensile strength test;
(iii) puncture resistance test;
(iv) trapezoidal tear test;
(v) ultraviolet (five hundred (500) hours) resistance test;
(vi) abrasion or tumble test;
(vii) permitivity test;
(viii) apparent opening size (AOS) test;
(ix) long term flow (clogging) test;
(x) gradient ratio (clogging) test;
(xi) the nature of the fibers (i.e., continuous filament or stable fibers);
(xii) the chemical compatibility of the geotextile;
(xiii) the polymer composition;
(xiv) the structure of the geotextile (i.e., woven or nonwoven);
(xv) thermal degradation and oxidation in extreme acidic conditions;
(xvi) pH resistance of the geotextile;
(xvii) creep;
(xviii) resistance to extreme temperature;
(xix) resistance to bacteria;
(xx) resistance to burial deterioration; and
(xxi) other tests or information that may become necessary, as determined by the commissioner, **to demonstrate the integrity of the drainage layer component.**

(B) If the geosynthetic material is a geonet:

(i) tensile strength test;
(ii) hydraulic transmissivity test;
(iii) specific gravity test;
(iv) melt flow index test;
(v) carbon black content test;
(vi) abrasion or tumble test;
(vii) creep;
(viii) thickness;
(ix) chemical compatibility;
(x) resistance to extreme temperature;
(xi) resistance to bacteria;
(xii) resistance to burial deterioration; and
(xiii) other tests or information that may become necessary, as determined by the commissioner, **to demonstrate the integrity of the geosynthetic material.**

(Solid Waste Management Board; 329 IAC 10-17-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1837; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3818; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1817, eff Apr 1, 2004)

SECTION 61. 329 IAC 10-17-12 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-17-12 Protective cover component of the liner; construction and quality assurance/quality control requirements

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

Sec. 12. (a) The protective cover must be installed in a single lift with no compaction. Quality control and quality assurance testing on the protective cover must include the following tests conducted at the indicated frequencies during installation of the protective cover:

(1) Grain size distribution to the number 200 sieve must be performed for every one thousand five hundred (1,500) cubic yards of protective cover placed on the liner system.

~~(2) Carbonate content testing must be performed:~~

~~(A) at a pH of four (4.0); and~~

~~(B) every three thousand (3,000) cubic yards;~~

~~and the carbonate content must be no greater than five percent (5%).~~

~~(3)~~ **(2)** Any additional tests as specified in the construction plans or as determined by the commissioner **to assure quality control and quality assurance.**

(b) If the geotextile described in section 11(b) of this rule is used as an alternative to the protective cover, the project engineer shall ensure the following:

(1) Proper quality control and quality assurance testing is performed on the geotextile, and adequate results are obtained for the following tests, where applicable, or equivalent tests, performed in accordance with section 17 of this rule:

(A) Grab elongation test.
(B) Grab tensile strength test.
(C) Puncture resistance test.
(D) Trapezoidal tear test.
(E) Ultraviolet (five hundred (500) hours) resistance test.
(F) Abrasion or tumble test.
(G) Other tests that may become necessary as determined by the commissioner **to demonstrate the integrity of the geotextile.**

(2) The following criteria are addressed when determining the quality of the geotextile:

(A) The nature of the fibers (i.e., continuous filament or stable fibers).
(B) The chemical compatibility of the geotextile.
(C) The polymer composition.
(D) The structure of the geotextile (i.e., woven or nonwoven).
(E) Thermal degradation and oxidation in extreme acidic conditions.
(F) pH resistance of the geotextile.
(G) Creep.
(H) Resistance to extreme temperatures.
(I) Resistance to bacteria.
(J) Resistance to burial deterioration.

(K) Other criteria that may become necessary as determined by the commissioner **to determine the quality of the geotextile.**

(Solid Waste Management Board; 329 IAC 10-17-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1838; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3819; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1818, eff Apr 1, 2004)

SECTION 62. 329 IAC 10-17-18 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-17-18 CQA/CQC preconstruction meeting

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

Sec. 18. For the purposes of ensuring coordination of all aspects of CQA/CQC, a preconstruction meeting must be held ~~upon the award of the~~ **prior to** construction ~~contract.~~ **in any area not approved to accept solid waste.** The preconstruction meeting must involve all relevant persons involved with implementing the CQA/CQC plan, such as the MSWLF owner or operator, the design engineer, CQA/CQC personnel, and the primary construction contractor. The preconstruction meeting may be used to accomplish the following:

(1) Provide each involved entity with all relevant CQA/CQC documents and supporting information addressing the site-specific CQA/CQC plan and its role relevant to the construction plans.

(2) Review the responsibilities, authorities, and lines of communication for each of the involved entities.

(3) Review the established procedures for observation and testing, including sampling strategies identified in the CQA/CQC plan.

(4) Review the established acceptance and rejection criteria as specified in the CQA/CQC plan.

(5) Review the approved specifications, with methods and means for decision making and resolution of problems pertaining to data.

(6) Review methods for documenting and reporting all inspection data.

(7) Discuss procedures for the storage and protection of MSWLF construction material on-site.

(8) Organize for relevant persons a site walk-around to review the project site layout, construction material and equipment storage locations.

(9) Discuss the CQA/CQC plan and other relevant issues and concerns.

(10) Discuss storm water management practices and sedimentation control appropriate for the construction work or as outlined in the construction specifications and plans.

(Solid Waste Management Board; 329 IAC 10-17-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1840; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3820; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1819, eff Apr 1, 2004)

SECTION 63. 329 IAC 10-19-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-19-1 Preoperational requirements and operational approval

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

Sec. 1. (a) A new MSWLF or lateral expansion that is permitted under this article must not accept solid waste before the owner, operator, or permittee submits to the commissioner a certification of completion. The certification of completion is a written statement by the owner, operator, or permittee that certifies the following:

(1) A construction certification report (CCR) has been prepared by a **registered** professional engineer and has been submitted to the commissioner. In the CCR, the **registered** professional engineer shall certify that the construction of the liner system components proceeded in accordance with the approved construction plans. The CCR must also include the following items:

(A) The following information for all components of the liner system:

(i) Documentation provided by the manufacturer that describes quality control and quality assurance tests conducted on raw materials and products used in the construction of the liner system component, including a description of methods for sample selection and the frequency with which tests were conducted.

(ii) Certification that the CQA/CQC tests were conducted in accordance with the approved construction plan. ~~or as specified by the commissioner.~~

(iii) A summary of the results of all testing, including documentation of any failed test results.

(iv) A description of corrective measures taken in response to failed tests.

(v) A description of all retesting conducted and the results of those tests.

(vi) A description of the previous relevant work experience and qualifications of the field crew foreman in charge of liner installation.

(B) The following information for the soil component of the liner system:

(i) All measures taken to prevent or remedy soil liner damage from either desiccation or freezing, both during and after construction.

(ii) The results of all testing required in Table 1 and Table 2 of 329 IAC 10-17-5(a), including:

(AA) description of steps taken to correct any improperly constructed soil material; and

(BB) test frequencies.

(iii) Certification that construction quality control testing indicated the soil liner material met the applicable hydraulic conductivity requirements.

(C) The following information for the geomembrane component of the liner system:

(i) Certification that the test seams were made:
(AA) at the start of work for each seaming crew;
(BB) after every four (4) hours of continuous seaming;
(CC) every time seam equipment is changed;
(DD) when significant changes in geomembrane temperature are observed; and
(EE) as additionally required in the approved construction plans.

(ii) Certification that field seams were nondestructively tested using a method in accordance ~~with the Geosynthetic Research Institute (GRI), the American Society for Testing and Materials (ASTM), the National Sanitation Foundation (NSF), current industry standards, or~~ with construction plans and specifications.

(iii) Certification that all seams that could not be nondestructively tested were overlain with geomembrane material of the same type.

(iv) Certification that a **registered** professional engineer monitored all nondestructive testing, informed the installer of any required repairs, and inspected the seaming and patching operation for uniformity and completeness.

(v) Records of:
(AA) the locations where samples were taken;
(BB) the name of the person conducting the tests; and
(CC) the results of all tests.

(D) If an optional drainage layer filter is used in the liner system design, an assessment of the geotextile filter that includes the following information:
(i) Polymer property density.
(ii) Polymer type.
(iii) Ultraviolet stability.
(iv) Mechanical properties.
(v) Tensile strength.
(vi) Permitivity.
(vii) Apparent opening size.
(viii) Puncture strength.

(E) Test results documenting the following:
(i) The chemical compatibility of the geomembrane and leachate collection pipes with waste and leachate. Relevant compatibility test results may be obtained from the manufacturer. If deemed necessary by the commissioner, additional compatibility testing may be required.
(ii) Adequate transmissivity upon the maximum compressive load for any geosynthetic material used in a drainage layer.

(2) Certifications by a **registered** professional engineer or a ~~certified~~ **licensed** professional geologist, whichever is appropriate, have been submitted to the commissioner to certify the following:

(A) Initial site development and construction, **including all permanent storm water control measures,** has been completed in accordance with the plot plans specified under 329 IAC 10-15-2 and in accordance with any preoperational conditions imposed as conditions in the facility permit.

(B) Identifiable boundary markers have been established that delineate the approved facility boundaries and the solid waste boundary.

(C) Permanent on-site benchmarks have been established with latitude and longitude and Universal Transverse Mercator coordinates, where available, and with vertical (mean sea level elevation) and horizontal control, such that no portion of the constructed solid waste disposal area is further than one thousand (1,000) feet from a benchmark, unless a greater distance is:
(i) necessary to avoid placement of benchmarks on filled areas; and
(ii) approved by the commissioner.

(D) The installation of all required ground water monitoring wells and piezometers and any required road leading to a **monitoring** well or piezometer has been completed.

(3) The following items have been submitted to the commissioner:

(A) A plot plan indicating location, mean sea level elevations, and identification of all ground water monitoring wells and piezometers.

(B) A copy of all ground water monitoring well and piezometer logs, including diagrammatical drilling logs and diagrammatical design and construction logs.

(C) From each **ground water monitoring** well in the monitoring system, the results of the first of the four (4) required water level measurements and four (4) independent ground water sampling analyses for the constituents in 329 IAC 10-21-15(a) (Table 1A). **Piezometers must be included to collect static water level measurements if part of the ground water monitoring system.** The remaining water level measurements and sampling analyses must be submitted ~~along with an initial statistical evaluation of the ground water quality data,~~ no later than six (6) months after the initial receipt of waste at the MSWLF unit.

(D) A ground water potentiometric surface map or a flow map, as described under 329 IAC 10-21-1(p).

(E) All financial responsibility documents have been executed and delivered to the department in the form and amount specified.

(4) All applicable post construction care procedures were followed.

(b) Upon satisfying all the requirements of subsection (a), a new MSWLF or lateral expansion permitted under this article may begin accepting waste in accordance with this article and with any additional permit conditions, unless the commissioner denies operational approval within twenty-one (21) days of receipt of the certification of completion. *(Solid Waste Management Board; 329 IAC 10-19-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1843; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2782; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3822; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1819, eff Apr 1, 2004)*

SECTION 64. 329 IAC 10-20-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-3 Signs
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) For all MSWLFs, **prior to construction activities,** a sign of at least sixteen (16) square feet must be erected at each MSWLF entrance. The sign must identify the following:

(1) The MSWLF's name.
(2) The operating schedule.
(3) The type of solid waste land disposal facility.
(4) The MSWLF permit number.
(5) The name and phone number of a designated emergency contact person to be contacted in case of an emergency.
(6) The location of the construction plan if the site does not have an on-site location to store the plan.

(b) For purposes of subsection (a)(5), the designated emergency contact person shall be the following:

(1) Authorized to respond to a reported emergency or be capable of contacting a person authorized to respond to a reported emergency.
(2) One (1) of the following:
(A) An employee or contractor of the facility operator.
(B) An answering service who can contact facility emergency personnel.
(C) For a municipally owned facility, a local emergency entity and telephone number may be used.

(c) Traffic signs or other devices, as needed, must be provided to promote an orderly traffic pattern to and from the discharge area. *(Solid Waste Management Board; 329 IAC 10-20-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1845; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3824; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1821, eff Apr 1, 2004)*

SECTION 65. 329 IAC 10-20-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-8 Records and reports
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 24-6; IC 36-9-30

Sec. 8. (a) The owner, operator, or permittee of a MSWLF shall record and retain at the MSWLF, in an operating record or in an alternative location approved by the commissioner, all MSWLF records, reports, and plans required by this article, including the following:

(1) An up-to-date copy of the plans and specifications approved by the commissioner in granting the permit.
(2) A copy of the current permit approved by the commissioner, including any modifications submitted to the commissioner and the response of the commissioner.
(3) A plot plan that must be updated quarterly. The owner, operator, or permittee shall maintain a log indicating dates of quarterly updates. The plot plan must describe the following:
(A) Areas of excavation.
(B) Areas of current filling.
(C) Areas under intermediate cover.
(D) Filled areas lacking final cover.
(E) Finished areas with final cover; contoured and seeded.
(4) Copies of department operating inspection reports during the preceding twelve (12) months.
(5) An inspection log as required by section 28(c) of this rule.
(6) A contour map resulting from the annual survey required under section 24(c) of this rule.
(7) ~~All special waste disposal notifications, certifications, verification notices, notices of denial, site-specific approvals,~~ Documentation ~~of waste determinations, and quarterly reports required under 329 IAC 10-8.1.~~ **used to determine compliance with section 14.1(b)(1) of this rule during the preceding twelve (12) months.**
(8) Any location restriction demonstration required under 329 IAC 10-16.
(9) Inspection records, training procedures, and notification procedures required by section 23 of this rule.
(10) Gas monitoring results from monitoring and any remediation plans required by section 17 of this rule.
(11) Any gas condensate testing results and amounts generated recorded on a weekly basis.
(12) Any leachate testing results and weekly leachate pumping quantities.
(13) Any MSWLF design documentation for placement of leachate or gas condensate in a MSWLF as required under section 27(a)(2) of this rule.
(14) Any demonstration, certification, finding, monitoring, testing, or analytical data required by **329 IAC 10-1-4(a) and (c)** *[329 IAC 10-1-4(a) and 329 IAC 10-1-4(c)]***, or** 329 IAC 10-21. ~~The owner, operator, or permittee shall maintain records of all monitoring information and monitoring activities, including the following:~~
~~(A) The date, exact place, and time of the sampling or measurements.~~
~~(B) The person or persons who performed the sampling or measurements.~~
~~(C) The date or dates analyses were performed.~~
~~(D) The person or persons who performed the analyses.~~
~~(E) The analytical techniques or methods used.~~
~~(F) The results of such measurements or analyses.~~
(15) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by 329 IAC 10-22 and 329 IAC 10-23.
(16) Any cost estimates and financial assurance documentation required by 329 IAC 10-39.
(17) Under 329 IAC 11-15-4(b), the owner, operator, or permittee of the MSWLF to which the municipal waste is transported shall retain each manifest for one (1) year and send one (1) copy of each manifest to the commissioner

within three (3) months after receiving the manifest. The manifests must be retained on-site at the MSWLF and must be made available to the commissioner's staff upon request.

(18) The storm water pollution prevention plan and monitoring records for storm water compliance.

(b) All information contained in the operating record and self-inspections must be furnished upon request to any representative of the commissioner.

(c) All reports submitted to the commissioner must be unbound or bound in a three-hole notebook and preferably copied on both sides of the pages.

(d) The commissioner may set alternative schedules for record keeping and notification requirements except for 329 IAC 10-16-1(d) and 329 IAC 10-21-13. *(Solid Waste Management Board; 329 IAC 10-20-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1846; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1727, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2785, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3826; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1821, eff Apr 1, 2004)*

SECTION 66. 329 IAC 10-20-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-11 Diversion of surface water, run-on and run-off control systems, and monitoring

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

Sec. 11. (a) The owner, operator, or permittee of MSWLFs shall design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the MSWLF during the peak discharge from a twenty-five (25) year storm.

(2) A run-off control system from the active portion of the MSWLF to collect and control at least the water volume resulting from a **twenty-five (25) year,** twenty-four (24) hour ~~twenty-five (25) year storm.~~ **precipitation event.**

(b) The owner, operator, or permittee of MSWLFs shall not deposit solid waste in standing or ponded water.

(c) **Storm water** run-off ~~from the active portion of the~~ **leaving an** MSWLF must be ~~handled~~ **discharged** in ~~accordance with 327 IAC 15-5, 327 IAC 15-6, and the discharge must meet the effluent limitations of the National Pollutant Discharge Elimination System under 327 IAC 5.~~ **a manner that does not cause or contribute to erosion or sedimentation or a violation of rules of the water pollution control board at 327 IAC 2-1-6(a).**

(d) Appropriate measures shall be planned and installed as part of an erosion and sediment control system.

(e) All storm water quality measures and erosion and sediment control measures must be implemented in accordance with the approved storm water pollution prevention plan and the requirements of this article.

(f) Monitoring requirements shall be as follows:

(1) Each storm water sedimentation basin or series of basins, composed of storm water run-off and any other permitted discharge, shall be monitored as follows:

Parameter	Units	Sample Type	Frequency
Total Iron	mg/l	grab	Semiannual
Ammonia (as N)	mg/l	grab	Semiannual
BOD_5 (biochemical oxygen demand)	mg/l	grab	Semiannual
TSS (Total suspended solids)	mg/l	grab	Semiannual
pH (measured in field)	s.u.	grab	Semiannual
Total Phenolics	mg/l	grab	Semiannual

(2) Each storm water sedimentation basin or series of basins subject to subdivision (1) shall be monitored for any other pollutant which is reasonably expected to be present in the storm water sedimentation basin or series of basins, as well as for any other pollutant as requested by the commissioner.

(3) During the first twelve (12) months after April 1, 2004, an owner, operator, or permittee shall sample and analyze the storm water sedimentation basin or series of basins identified in the pollution prevention plan. The monitoring data taken from this first year event shall be used by the owner, operator, or permittee as an aid in developing and implementing the SWP3. Subsequent semiannual sampling data shall be used to verify the effectiveness of the SWP3 and will aid the owner, operator, or permittee with revising the SWP3 and with the implementation of additional best management practices, as necessary. For new facilities and lateral expansions, the results of monitoring shall be submitted one (1) year after the issuance of the MSWLF permit.

(4) The pH measurement must be taken at the time the grab sample is collected and by using a portable pH meter that has been properly calibrated to the manufacturer's specifications and that provides results displayed in numeric units. A color comparison analysis for pH is not acceptable.

(5) Samples must be collected according to a semiannual schedule. There shall be a minimum of three (3) months between reported sampling events.

(6) Samples must be taken at a point representative of the outflow from the storm water sedimentation basin or series of basins, but prior to entry into surface waters of the state or a municipal separate storm sewer conveyance.

(g) Reporting requirements shall be as follows:

(1) For each measurement or sample taken under this rule, the owner, operator, or permittee of the facility shall record and submit the following information to the commissioner:

(A) The exact place, date, and time of sampling.

(B) The detection limit for each chemical constituent.

(C) The individual who performed the sampling or measurements.

(D) The dates the analyses were performed.

(E) The individual who performed the analyses.

(F) The analytical techniques or methods used.

(G) The results of all required analyses and measurements.

(H) A complete copy of the laboratory report, including chain-of-custody.

(2) The commissioner will evaluate the storm water monitoring results and compare the results with landfill-specific benchmark monitoring cut-off concentrations and numeric limitations as described in NPDES Storm Water Multi-Sector General Permit for Industrial Activities, Federal Register, Vol. 65, No. 210, October 30, 2000. If the storm water monitoring results indicate that the SWP3 has been ineffective in controlling pollutants in storm water discharges from the facility, then the commissioner may require modifications to the SWP3.

(3) All records and information resulting from the monitoring activities, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of three (3) years.

(4) An owner, operator, or permittee shall submit sampling data results to the commissioner within sixty (60) days of obtaining the storm water samples in a sampling event.

(5) An owner, operator, or permittee of an MSWLF that has a discharge which enters a municipal separate storm sewer shall also submit a copy of the sampling data results to the operator of the municipal system upon request.

(6) If an owner, operator, or permittee monitors a pollutant more frequently than required by this rule, using analytical methods referenced in this rule, the results of such monitoring must be reported as additional information. Such increased frequency must also be indicated.

(Solid Waste Management Board; 329 IAC 10-20-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1848; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3827; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1822, eff Apr 1, 2004)

SECTION 67. 329 IAC 10-20-12 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-12 Erosion and sedimentation control measures; general requirements

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

Sec. 12. (a) Erosion and sedimentation control measures must be instituted to minimize the off-site migration of any sediment. All run-off from disturbed acreage must pass through a sedimentation basin or an approved alternative sediment control practice. The commissioner may require additional erosion and sediment control measures **based on site-specific conditions.**

(b) A storm water or sedimentation basin or series of basins permitted and constructed under this article must be constructed in accordance with the following:

(1) Be designed to handle, simultaneously, the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation event and the sediment storage volume required by subdivision (3).

(2) An appropriate combination of principal and emergency ~~spillway~~ **spillways** shall be provided to discharge safely the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event with a minimum of two (2) feet of freeboard.

(3) Provide a minimum of three (3) years of sediment storage volume. The following requirements apply:

(A) Sediment must be removed from sedimentation basins when the volume of sediment accumulates to fifty percent (50%) or more of the designed sediment storage volume.

(B) A sediment storage volume of less than three (3) years may be approved by the commissioner if an annual approved maintenance program will be performed.

(4) Provide a detention time of at least twenty-four (24) hours for the ten (10) year, twenty-four (24) hour precipitation event. A detention time of less than twenty-four (24) hours may be approved by the commissioner if the following is demonstrated by the owner, operator, or permittee:

(A) The discharge will not result in the release of a significant quantity of sediment from the MSWLF.

(B) Will not violate any local, state, or federal laws pertaining to discharges.

(5) The principal spillway must be located at a height above the maximum elevation of the designed sediment storage volume required by subdivision (3).

(6) Discharge in compliance with all applicable state and federal laws.

(7) The length-to-width ratio of the flow path shall be 2:1 or greater from the inflow to the outflow. Baffles may be used within the basin to achieve this ratio.

(c) If deemed necessary by the commissioner, additional erosion and sediment control practices may be required in the drainage areas of permanent basins for the purposes of increasing the life of the basin and increasing the overall efficiency of removing sediment from run-off.

(d) Alternatives to the requirements in subsections (b) through (c) may be approved by the commissioner. Factors that will be considered include the following:

(1) The amount of water collected from disturbed areas and undisturbed areas.

(2) Use of erosion control measures on disturbed areas.

(3) Sedimentation control measures utilized in the drainageways.

(e) The commissioner may require the submittal of the following information for any storm water/sedimentation pond or basin to verify it is designed and constructed properly:
(1) Basin plan view.
(2) Typical cross section.
(3) All the inlet and outlet elevations.
(4) Assumptions used to size the basin.
(5) Calculations used.
(6) Justifications.

(f) A storm water pollution prevention plan must be prepared in accordance with 329 IAC 10-15-12. The plan must be updated whenever there is a change at the MSWLF that would significantly affect the storm water discharges authorized under the MSWLF's permit. The plan must be kept on site and must be available to the commissioner at the time of an on-site inspection.

(g) A written nonstorm water assessment including the following shall be kept in the facility record:
(1) A certification statement that storm water discharges entering waters of the state have been evaluated for presence of contaminants and nonstorm water contributions. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during the test.
(2) A statement that the facility does not allow detergent or solvent-based washing of equipment or vehicles that would allow washwater additives to enter any storm drainage system or receiving water.
(3) A statement that all interior maintenance areas floor drains that have the potential for maintenance fluids or other materials to enter storm sewers are connected to a sanitary sewer or other appropriate collection system, and that all maintenance fluids or other materials are properly disposed in accordance with all applicable local, state, and federal laws.

(Solid Waste Management Board; 329 IAC 10-20-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1848; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2786; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3827; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1823, eff Apr 1, 2004)

SECTION 68. 329 IAC 10-20-13 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-13 Cover; general provisions
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 13. (a) Except as provided in subsection (c), daily cover for MSWLFs must be earthen material or an alternative daily cover as allowed under section 14.1 of this rule. Intermediate cover for MSWLFs must be ~~Classification ML,~~ earthen material or other suitable material approved by the commissioner to provide an adequate level of environmental protection. Final cover must be as specified in 329 IAC 10-22-6 or 329 IAC 10-22-7, whichever is applicable.

(b) Cover must be applied and maintained at MSWLFs in accordance with the applicable requirements of this rule and 329 IAC 10-22. Other provisions for cover may be approved by the commissioner if it can be demonstrated that an alternate cover or site design will provide an adequate level of environmental protection.

(c) Daily and intermediate cover for MSWLFs without a:
(1) leachate collection system; and
(2) composite liner;
must be soil of Unified Soil Classification ML, CL, MH, CH, or OH, or other suitable material approved by the commissioner to provide an adequate level of environmental protection. Final cover must be as specified in 329 IAC 10-22-6 or 329 IAC 10-22-7, whichever is applicable. *(Solid Waste Management Board; 329 IAC 10-20-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1849; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3828; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1824, eff Apr 1, 2004)*

SECTION 69. 329 IAC 10-20-20 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-20 Leachate collection, removal, and disposal
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 20. (a) The owner, operator, or permittee of an MSWLF ~~that has a previously existing leachate collection or leachate removal system~~ shall ~~develop~~ **have** a leachate contingency plan. ~~within six (6) months of the effective date of this rule.~~ At a minimum, the plan must address all the requirements listed in ~~329 IAC 10-15-11(a).~~ **329 IAC 10-15-11.**

(b) The owner, operator, or permittee shall:
(1) operate the leachate collection or leachate removal system in compliance with the design standards and plans specified in 329 IAC 10-15 and 329 IAC 10-17-8 through 329 IAC 10-17-9;
(2) monitor and maintain the leachate collection or leachate removal system as required in the leachate contingency plan under ~~329 IAC 10-15-11(a)(1)~~ **329 IAC 10-15-11(1)** through ~~329 IAC 10-15-11(a)(2)~~ **329 IAC 10-15-11(2)** or subsection (a); and
(3) implement the leachate contingency plan required under ~~329 IAC 10-15-11(a)(4)~~ **329 IAC 10-15-11(4)** or subsection (a), if the leachate collection or leachate removal system is not ~~operation~~ **operational** or leachate levels are exceeded.

(c) Any discharge or disposal of collected leachate must be

accomplished in accordance with all applicable local, state, and federal laws.

(d) The leachate contingency plans required by 329 IAC 10-15-11 and subsection (a) must be retained in the operating record on-site at the MSWLF as required by section 8(a) of this rule and be made available to representatives of the department upon request. *(Solid Waste Management Board; 329 IAC 10-20-20; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1852; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3832; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1824, eff Apr 1, 2004)*

SECTION 70. 329 IAC 10-20-24 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-24 Survey requirements
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 24. (a) The owner, operator, or permittee of an MSWLF shall maintain the series of identifiable boundary markers required under 329 IAC 10-19-1(a)(2)(B) to delineate the approved solid waste land disposal facility ~~boundaries~~ **boundary** and approved solid waste boundaries for the life of the MSWLF.

(b) The owner, operator, or permittee shall maintain the on-site benchmarks required under 329 IAC 10-19-1(a)(2)(C) so that no portion of the proposed solid waste disposal area is further than one thousand (1,000) feet from a benchmark unless a greater distance is necessary to avoid the placement of benchmarks on filled areas and is approved by the commissioner.

(c) The owner, operator, or permittee shall conduct an annual survey between October 1 and December 31 of each year for the purpose of establishing a contour map that indicates existing contours of the MSWLF and the existing limits of solid waste disposed at the MSWLF. The contour map must be done at the same scale as the final contour map required under 329 IAC 10-15-2. The contour map must indicate the day the survey was conducted and must be submitted to the department by February 15 of the year following the survey in a paper copy form. ~~as required by 329 IAC 10-15-2(b). In addition to the paper copy, a copy may also be submitted electronically.~~

(d) The owner, operator, or permittee of a currently permitted MSWLF shall submit a present contour map and a proposed final contour map on paper copy form as required by 329 IAC 10-15-2(b). In addition to the paper copy forms, a copy may also be submitted electronically. No subsequent annual submissions of the final contour map will be necessary unless there is a change to the approved final contours. *(Solid Waste Management Board; 329 IAC 10-20-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2789; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3834; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1825, eff Apr 1, 2004)*

SECTION 71. 329 IAC 10-20-26 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-26 Surface water requirements
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 26. (a) The owner, operator, or permittee of an MSWLF shall not cause a discharge of pollutants into waters of the state, including wetlands, that violates any requirements of **rules of the water pollution control board at** 327 IAC and the Clean Water Act, including the National Pollutant Discharge Elimination System requirements, under Section 402 of the Clean Water Act, 33 U.S.C. 1342, as amended October 31, 1992.

(b) The owner, operator, or permittee of an MSWLF shall not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area wide or statewide water quality management plan that has been approved under Section 208, 33 U.S.C. 1288, as amended February 4, 1987, or Section 319, 33 U.S.C. 1329, as added February 4, 1987, of the Clean Water Act.

(c) Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and cleanup measures shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.

(d) Storage piles of sand and salt or other commercial or industrial material must be managed in a manner to reduce the potential for polluted storm water run-off and in accordance with the SWP3. *(Solid Waste Management Board; 329 IAC 10-20-26; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1825, eff Apr 1, 2004)*

SECTION 72. 329 IAC 10-20-28 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-28 Self-inspections
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 28. (a) The owner, operator, or permittee of an MSWLF shall monitor and inspect the MSWLF a minimum of at least twice each month for malfunctions, deteriorations, operator errors, discharges, and leachate outcroppings that may cause a release **of pollutants** to the environment or a threat to human health. **Inspections shall include erosion and sedimentation control measures.**

(b) The owner, operator, or permittee shall promptly correct

any deterioration or malfunction of equipment or structures or any other problems revealed by the inspections to comply with the MSWLF's permit and this article and to ensure that no environmental or human health hazard develops. Where a hazard is imminent or has already occurred, remedial action must be taken immediately to correct or repair the hazard.

(c) The owner, operator, or permittee shall record inspections on an inspection form provided by the department or at a minimum, on a form that includes the following:

(1) The date and time of the inspection.

(2) The name of the inspector.

(3) A description of the inspection, including an identification of the specific equipment and structures inspected.

(4) The observations recorded.

(5) The date and nature of any remedial actions implemented or repairs made as a result of the inspection.

These records must be retained at the MSWLF for at least three (3) years from the date of inspection. *(Solid Waste Management Board; 329 IAC 10-20-28; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1854; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1825, eff Apr 1, 2004)*

SECTION 73. 329 IAC 10-21-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-1 General ground water monitoring requirements

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

Sec. 1. (a) The owner, operator, or permittee of MSWLFs shall comply with the ground water monitoring requirements of this rule according to the following schedule:

(1) Existing MSWLF units and lateral expansions less than or equal to two (2) miles from a drinking water surface or subsurface intake must be in compliance with the applicable ground water monitoring requirements specified in this rule by ~~the effective date of this rule.~~ **April 13, 1996.**

(2) Existing MSWLF units and lateral expansions greater than two (2) miles from a drinking water surface or subsurface intake must be in compliance with the applicable ground water monitoring requirements specified in this rule by October 9, 1996.

(3) New MSWLF units must be in compliance with the applicable ground water monitoring requirements specified in this rule before waste can be placed in the unit.

(b) Alternative methods, procedures, or equipment to those prescribed in this rule may be used provided the selected alternative yields results or measurements that are equivalent in accuracy and reliability and the use of the alternative is approved by the commissioner.

(c) The number, spacing, and location of ground water monitoring wells **and piezometers** for an existing MSWLF must comply with the MSWLF's permit. The number, spacing, and location of ground water monitoring wells **and piezometers** for new MSWLFs must meet the requirements of 329 IAC 10-15-5.

(d) All ground water monitoring wells **and piezometers** must be affixed with permanent identification that uniquely identifies each **monitoring** well at the MSWLF. The owner, operator, or permittee shall:

(1) number;

(2) label; and

(3) maintain labels;

on all ~~ground water~~ monitoring wells **and piezometers.**

(e) Ground water monitoring wells **and piezometers** must be accessible and visible at all times. Access to ~~ground water~~ **monitoring** wells through on-site roads must be available, regardless of weather conditions. Access to monitoring wells for four (4) wheel drive vehicles must be provided to ensure vehicle access throughout any season of the year. Vegetation must be controlled on the on-site roads and around the **monitoring** wells **and piezometers.** Access to all ~~ground water~~ monitoring wells **and piezometers** approved by the commissioner must be restricted to operating personnel, department personnel, and persons contracted by the owner, operator, or permittee to collect samples.

(f) Ground water monitoring wells, **piezometers,** and equipment must be properly maintained to ensure representative ground water samples. The owner, operator, or permittee must practice proper maintenance procedures, including the following:

(1) Keep ~~all~~ **the ground water monitoring** wells securely capped and locked when not in use. The owner, operator, or permittee shall maintain all the caps and locks.

(2) Make repairs as necessary to correct any wear, decay, severe corrosion, or physical ~~damages~~ **damage** that ~~are~~ **is** observed on or in the **ground water monitoring** well, **piezometer,** or dedicated equipment **to maintain integrity,** and submit to the commissioner documentation that the necessary repairs have been made. ~~to maintain the integrity of the well.~~

(3) Maintain proper drainage around each **ground water monitoring** well head ~~by~~ **and piezometer. Repairs as necessary must be made to** the ~~use of a~~ concrete ~~pad around the protective casing~~ **apron** of ~~each well~~ **the monitoring well to prevent water infiltration or ponding.**

(4) Control vegetation height around each of the wells. ~~as required in 329 IAC 10-20-2(d).~~

(5) Redevelop a **ground water monitoring** well that has accumulated a silt volume ~~of more than twenty percent (20%) of the screen length~~ **that may compromise the quality of the sample.** The **monitoring** well must be redeveloped prior to the next sampling event. **One (1) of the following procedures must be used to determine the need to redevelop the monitoring well:**

(A) Any regularly scheduled total depth measurement

that indicates more than twenty percent (20%) of the screen length has been filled with silt. Any schedule of soundings less often than semiannually must be approved by the commissioner and based on geohydrological characteristics of the aquifer or known rate of down-hole siltation.

(B) Semiannual field tests that indicate an order-of-magnitude rise in turbidity or total solids for sampling points using dedicated submersed equipment.

(C) Any other equivalent procedure that has been approved by the commissioner.

(g) If a ground water monitoring well **or a piezometer** is destroyed or otherwise fails to properly function, the owner, operator, or permittee must comply with the following requirements:

(1) The owner, operator, or permittee shall provide the commissioner with a written report within ten (10) days of discovering that the **ground water monitoring** well **or piezometer** is destroyed or not properly functioning. The report must include the following information:

(A) The date of discovery that a **ground water monitoring** well **or piezometer** is destroyed or is not properly functioning.

(B) The probable cause of **ground water monitoring** well **or piezometer** destruction, damage, or malfunction.

(C) A proposed repair or replacement plan, in accordance with ~~subdivision (2)~~ **the following** and with section 4 of this rule, that is subject to the commissioner's approval:

(i) If the ground water monitoring well or piezometer is repaired, the following requirements must be fulfilled:

(AA) The owner, operator, or permittee shall submit to the commissioner a description of the repair methods.

(BB) The owner, operator, or permittee shall submit to the commissioner the revised design and construction diagram.

(ii) If the ground water monitoring well or piezometer is replaced, the following requirements must be fulfilled:

(AA) The original ground water monitoring well or piezometer must be properly abandoned in accordance with subsection (i).

(BB) A description of installation methods for the replacement of all pertinent ground water monitoring wells or piezometers, a monitoring well and piezometer design and construction diagram, and the borehole drilling log must be submitted to the commissioner.

(CC) Replacement ground water monitoring wells or piezometers must meet the design requirements of section 4 of this rule

(DD) Replacement ground water monitoring wells or piezometers constructed within fifteen (15) feet of the original monitoring well or piezometer may have earthen material sampling and earthen material sample testing requirements waived by the commissioner if the original ground water monitoring well or piezometer earthen material sampling and earthen material sample testing complies with section 4 of this rule.

(2) Within thirty (30) days after receiving the commissioner's approval of the plan submitted under subdivision (1)(C), the **ground water** monitoring well **or piezometer** must be repaired or replaced in accordance with the ~~following:~~ **approved plan.**

~~(A) If the well is repaired, the following requirements must be fulfilled:~~

~~(i) The owner, operator, or permittee shall submit to the commissioner a description of the repair methods.~~

~~(ii) The owner, operator, or permittee shall submit to the commissioner the revised design and construction diagram.~~

~~(B) If the ground water monitoring well is replaced, the following requirements must be fulfilled:~~

~~(i) The original ground water monitoring well must be properly abandoned in accordance with subsection (i).~~

~~(ii) A description of installation methods for the replacement of all pertinent ground water monitoring wells, a well design and construction diagram, and the borehole drilling log must be submitted to the commissioner.~~

(3) If discovery of a **ground water monitoring** well **or piezometer** failure coincides with the time of a scheduled sampling event, the failed monitoring well **or piezometer** must be sampled immediately after it has been repaired or replaced.

(h) The owner, operator, or permittee shall abandon and replace a ground water monitoring well if:

(1) the ground water monitoring well has a permeable or semipermeable annular sealant; or

(2) any of the following details of the ground water **monitoring** well construction are not available:

(A) Screened interval.

(B) Annular sealant material.

(C) Borehole and casing diameters.

(D) Casing and screen material.

(E) Ground elevation and the reference mark elevation.

(F) Outside casing diameter and depth.

(G) Filter pack material.

(i) The owner, operator, or permittee shall notify the commissioner in writing and obtain written approval to decommission or abandon any ground water monitoring well **or piezometer.** Abandonment procedures must comply with the following:

(1) Abandonment procedures must be:

(A) in compliance with ~~310 IAC 16-10-2~~ **rules** of the ~~department of~~ natural resources **commission at 312 IAC 13-10-2;** or

(B) an alternative procedure approved by the commissioner

that provides equivalent environmental protection.

(2) Methods of abandonment must ensure that slurry does not bridge or become obstructed and that the borehole is completely sealed.

(3) Attempts must be made to remove the entire casing from the **ground water monitoring** well **or piezometer** to be abandoned if there is evidence that the integrity of the annulus between the borehole and **monitoring** well **or piezometer** casing has been compromised.

(4) Accurate records of the location **of the ground water monitoring well or piezometer** and **the** abandonment procedures must be maintained in the operating records.

(j) All ground water monitoring wells that have been approved by the commissioner must be used to obtain ground water to be analyzed for the purpose of this rule.

(k) The commissioner may require additional ground water monitoring wells **and piezometers** during the active life, closure, or post-closure care period of the MSWLF if:

(1) ground water flow data indicate that ground water flow directions are other than anticipated in the ground water monitoring system design;

(2) further evaluation of the hydrogeology of the MSWLF determines that additional **ground water monitoring** wells **or piezometers** are needed; or

(3) additional **ground water monitoring** wells **and piezometers** are necessary to achieve compliance with ground water monitoring standards under 329 IAC 10-15-5.

(l) The ground water monitoring boundary must be located:

(1) within the **real** property ~~line;~~ **boundary;** and

(2) within fifty (50) feet of the solid waste boundary that has been approved by the commissioner for final closure, except where fifty (50) feet is not possible because of physical obstacles or geology. If the owner, operator, or permittee chooses to use intrawell comparison procedures to evaluate the ground water data, the monitoring boundary shall be considered to be at the location of each ground water monitoring well designated for the detection monitoring program.

(m) The number of independent ground water samples collected to establish background ground water quality data must be consistent with the appropriate statistical procedures in accordance with section 6 of this rule.

(n) Background ground water quality may be established at ground water monitoring wells that are not located hydraulically upgradient from the MSWLF solid waste boundary if, as determined by the commissioner:

(1) hydrogeologic conditions do not allow the owner, operator, or permittee to determine which **ground water monitoring** wells are hydraulically upgradient; or

(2) sampling at other **ground water monitoring** wells will provide an indication of background water quality that is as representative or more representative than that provided by the upgradient **monitoring** wells.

(o) If contamination is detected in any ground water monitoring well used to establish background ground water quality, the contamination must be investigated, within the MSWLF's facility boundary, to the extent necessary to determine that the MSWLF is not the cause of contamination. If an investigation reveals that the contamination is caused by one (1) or more MSWLF units within the MSWLF, the owner, operator, or permittee must:

(1) further assess and investigate the contamination, as specified under section 10 of this rule; and

(2) use any **ground water** monitoring well in which the contamination is detected as a downgradient **monitoring** well in all ground water monitoring programs.

(p) Each time ground water samples are collected from ground water monitoring wells at the monitoring boundary, the owner, operator, or permittee shall prepare and submit to the commissioner ground water potentiometric-surface maps, or flow maps, of the aquifer being monitored at the site. Except for subdivisions (5), (11), and ~~(13),~~ **(12),** which may be presented in tabular form accompanying the maps, each map must indicate the following:

(1) A clear identification of the contour interval for the potentiometric-surface or water table surface of each aquifer being monitored at the MSWLF.

(2) The ground water monitoring wells **and piezometers:**

(A) considered to be upgradient **and background;**

(B) considered to be downgradient; and

(C) for which there has been no determination due to the hydrogeologic complexities.

(3) Each ground water monitoring well's identification and location.

(4) Each piezometer's identification and location.

(5) The static water elevations at each ground water monitoring well, referenced to mean sea level and measured to the nearest one-hundredth (0.01) foot.

(6) Real property boundaries, facility boundaries, and the solid waste boundaries.

(7) The identification of each aquifer through either its title or its elevation.

(8) The MSWLF's name and county.

(9) The map scale and a north arrow.

(10) Ground water flow arrows.

(11) The date and time of the measurements for each of the **ground water monitoring** wells **and piezometers.**

(12) The elevation of the ground surface and the top of the casing at each **ground water monitoring** well and piezometer. The elevation of the referenced mark located on top of the casing of each ground water monitoring well and piezometer must be surveyed to the nearest plus or minus one-hundredth (± 0.01) foot. The referenced mark must be used to measure static water levels.

(13) The following information, upon request by the commis-

sioner:

(A) An updated site surface topography and surface water drainage patterns as described under 329 IAC 10-15-4(b)(12) if the potentiometric surface being evaluated is influenced by surface topography.

(B) All water wells and surface water bodies used as a drinking water source within one-fourth (¼) mile of the solid waste boundary.

(C) Any other information the commissioner determines to be necessary, **including ground water flow gradient and velocity,** to evaluate the map information.

(14) Unless the commissioner deems necessary based on hydrogeological conditions, data for potentiometric surface maps of the entire site are not required to be collected if one (1) or more of the following exist:

(A) When very few ground water monitoring wells are required to be sampled to establish background for the constituents listed in Table 1A under section 15(a) of this rule.

(B) When very few ground water monitoring wells need to be sampled to verify a preliminary exceedance.

(C) When very few ground water monitoring wells are required to be sampled under section 10(b)(1) or 10(e) of this rule.

(D) When very few ground water monitoring wells need to be sampled to establish background under section 10(b)(4) of this rule.

(q) Ground water must be monitored as required in sections 7, 10, and 13 of this rule. The sampling frequency must be as specified under:

(1) section 7 of this rule for detection monitoring;

(2) section 10 of this rule for assessment monitoring; and

(3) section 13 of this rule for corrective action.

~~(r) All ground water monitoring wells that are so specified by the commissioner must have ground water samples collected and analyzed for the constituents identified in Table 1A, Table 1B, or Table 2, whichever is applicable. Ground water sampling must be done semiannually or at another frequency specified by the commissioner.~~

~~(s) Each time~~ **(r)** Ground water samples ~~are~~ collected from ground water monitoring wells at the monitoring boundary ~~the following requirements~~ for static water elevations must **always** be:

(1) Obtained from each ground water monitoring well and each piezometer **required to be sampled for the applicable ground water monitoring program.**

(2) Measured to the nearest one-hundredth (0.01) foot, and referenced to mean sea level.

(3) Obtained as close in time as practical from each **ground water monitoring** well or piezometer prior to purging and sampling. ~~each well.~~ If such a purging and collection sequence is expected to affect the accuracy of the static water elevation measurements in any **other ground water monitoring** well or piezometer in the ground water monitoring system, then water elevation measurements must be obtained **from all ground water monitoring wells and piezometers** prior to purging and sampling any **ground water monitoring** well.

~~(t)~~ **(s)** The owner, operator, or permittee shall submit the following information to the commissioner within sixty (60) days of obtaining the ground water samples in a sampling event unless a verification sampling program, as described in section 8 of this rule, is implemented:

(1) All static water elevations measured to the nearest one-hundredth (0.01) foot.

(2) Ground water potentiometric-surface maps, or flow maps, as specified in subsection (p).

(3) Two (2) unbound laboratory certified reports, including one (1) original copy, that include the following information **unless otherwise specified by the commissioner:**

(A) The detection limit for each chemical constituent.

(B) The date samples were collected.

(C) The date samples were received by the laboratory.

(D) The date samples were analyzed by the laboratory.

(E) The date the laboratory report was prepared.

(F) The method of analysis used for each constituent.

(G) The sample identification number for each sample.

(H) The results of all sample analyses.

(4) Field report sheets as described under section 2(b)(12) of this rule for each ground water monitoring well sampled and the field chain of custody form for each sample as described under section 2(b)(14) of this rule.

(5) A report correlating sample identification numbers with the corresponding **ground water monitoring** well identification number and blank identification numbers.

(6) An explanation of how the **ground water monitoring** well sampling sequence as described under section 2(a)(6) of this rule was established for the sampling event.

(7) **Two (2) copies of** the statistical evaluation ~~report~~ **reports** as described under section 6(e) of this rule.

~~(8) When requested by the commissioner, one (1) copy of the results of the laboratory analyses on computer diskette or by other electronic means must be submitted to the commissioner. The electronic format of the submission will be established by the commissioner.~~

~~(9)~~ **(8)** When requested by the commissioner, the following information:

(A) The results of all laboratory quality control sample analyses, including:

(i) blanks;

(ii) spikes;

(iii) duplicates; and

(iv) standards.

(B) Raw data.

(C) Laboratory bench sheets.

(D) Laboratory work sheets.

(E) Chromatograms.

(F) Instrument printouts.

(G) Instrument calibration records.

~~(t)~~ **(t)** Detection monitoring must be conducted throughout the active life, closure, and post-closure periods of the MSWLF. *(Solid Waste Management Board; 329 IAC 10-21-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1855; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2791; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3836; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1826, eff Apr 1, 2004)*

SECTION 74. 329 IAC 10-21-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-2 Sampling and analysis plan and program

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

Sec. 2. (a) The owner, operator, or permittee shall carry out a ground water sampling and analysis program that is specified in an approved sampling and analysis plan, and that complies with the requirements of this rule. The sampling and analysis plan must address all items included in this section, where applicable, and it must satisfy the following requirements:

(1) For all new MSWLFs permitted under this article, the sampling and analysis plan must be approved by the commissioner before the first sampling event occurs.

(2) Existing MSWLFs that have not previously submitted an approved sampling and analysis plan that includes all applicable requirements of this section, must have a plan approved by the commissioner by one (1) of the following times, whichever occurs first:

(A) At the time of the next permit renewal application.

(B) At closure.

(C) At a time determined by the commissioner **based on information supplied by the MSWLF.**

(3) Existing MSWLFs that have, by ~~the effective date of this article,~~ **April 13, 1996,** submitted to the commissioner an approved sampling and analysis plan that does not include all applicable requirements of this rule, must submit a revised plan, if deemed necessary by the commissioner, by one (1) of the following times, whichever occurs first:

(A) At the time of the next permit renewal application.

(B) At closure.

(C) At a time determined by the commissioner **based on information supplied by the MSWLF.**

(4) Changes or additions to a previously approved sampling and analysis plan must be approved by the commissioner before the changes or additions are implemented.

(5) The approved sampling and analysis plan must be retained at or near the MSWLF in the operating record or at an alternative location approved by the commissioner.

(6) The sampling and analysis plan must include the following:

(A) A description of the following:

(i) The method that will be used to determine the sequence of sampling of ground water monitoring wells. The sequence determination must:

(AA) compare **ground water monitoring** wells that are not contaminated to those that are contaminated or to those that have the potential to be contaminated; and

(BB) follow the criteria described under subsection (b)(8).

(ii) The method of evacuation, including:

(AA) a description of the equipment and procedures to be used;

(BB) the method for calculating one (1) well volume at each well; and

(CC) the method for measuring the volume of water evacuated.

(iii) The equipment and procedures to be used in sample collection during detection, assessment, and corrective action ground water monitoring programs, including, but not limited to:

(AA) the sizes, number, and material of containers to be used for collection of samples; and

(BB) the manufacturer, make, and model number of field meters for pH, Eh **(oxidation-reduction potential),** and specific conductance.

(iv) Copies of the owner's manual for each type of meter used in the sampling procedures.

(B) The qualifications and minimum training that the owner, operator, or permittee will require of the ground water sampler or sampling crew.

(b) The sampling and analysis program and procedures must comply with the following:

(1) The sampling crew shall:

~~(A) comply with requirements of state and federal agencies regarding worker safety;~~

~~(B)~~ **(A)** wear latex gloves, vinyl gloves, or gloves made out of alternative material that has been approved by the commissioner whenever the samplers' hands are in proximity of:

(i) sample water;

(ii) open sample containers;

(iii) sampling equipment; or

(iv) the open **monitoring** well; and

~~(C)~~ **(B)** avoid contact between gloves and samples.

(2) Each time ground water samples are collected from ground water monitoring wells at the monitoring boundary static water elevations must be:

(A) obtained from each **ground water** monitoring well ~~and each piezometer~~ **where a sample has been collected;**

(B) measured to the nearest one-hundredth (0.01) foot, and referenced to mean sea level; and

(C) obtained as close in time as practical from each **ground water monitoring** well or piezometer prior to purging and sampling. ~~each well.~~

If such a purging and collection sequence is expected to affect the accuracy of the static water elevation measurements in any other **ground water monitoring** well or piezometer in the ground water monitoring system, then water elevation

measurements must be obtained **from all ground water monitoring wells and piezometers** prior to purging and sampling any **ground water monitoring** well.

(3) Samples that are to be analyzed for dissolved metals must be field filtered immediately after the sample is obtained from the **ground water** monitoring well using a forty-five hundredths (0.45) micron high capacity filter. Use of an alternative filter type or filter size must be approved by the commissioner.

(4) Static water in the **ground water** monitoring well must be removed with equipment that does not:

(A) cause the water to cascade over the **ground water monitoring** well screen; or

(B) cause strong gradients or excess volatilization of organic compounds in the ground water.

(5) The method of evacuation must be suited to the recharge of the ground water monitoring well, the well depth, and the well diameter, and must comply with one (1) of the following:

(A) Evacuation may be accomplished with a pump. If a pump is used, the following requirements must be satisfied:

(i) The intake of the pump must be placed within, and ground water must be withdrawn from, the screened interval of the **ground water monitoring** well.

(ii) Purging with a pump must continue until a minimum of three (3) well volumes has been evaluated or the field constituents of pH, specific conductance, and temperature are stabilized within ten percent (10%) of a field determined mean reading for three (3) consecutive field readings to be completed as follows:

(AA) A minimum of six (6) samples must be taken for the required parameters.

(BB) Three (3) consecutive samples must be used to arrive at the field determined mean reading, and each of the next three (3) samples must be within ten percent (10%) of the field determined mean.

(CC) In the event that one (1) or more of the last three (3) samples are not within ten percent (10%) of the mean, the first sample will be deleted and a new field mean will be calculated from the next three (3) consecutive samples.

(DD) Additional samples are taken and the process described under subitem (CC) is continued until three (3) consecutive samples agree within ten percent (10%) of the field mean determined by the three (3) previous consecutive samples.

(EE) Purging a **monitoring** well by more than five (5) well volumes is prohibited.

(iii) When removing water from the **ground water monitoring** well for obtaining a sample, the pump must not be raised or lowered unless the potentiometric surface is as low as or lower than the top of the well screen.

(iv) A **ground water monitoring** well purged by a pump must be sampled by the same pump unless otherwise approved by the commissioner.

(v) If the permittee chooses to use a rotary pump, it must be used in accordance with the following:

(AA) The flow must be maintained at a slow and steady rate.

(BB) If the flow of water is intermixed with air during the use of the rotary pump, the pump must be lowered deeper into the water column or the sample collection must be accomplished with a bottom discharging bailer.

(CC) The interior of the pump must be coated with Teflon® or an inert material equivalent to Teflon® or be composed of stainless steel.

(vi) If the permittee chooses to use a positive gas displacement pump, it must be used in accordance with the following:

(AA) The flow must not be at a rate that forcefully ejects water or gas at the end of the expulsion cycle.

(BB) The generator must be placed downwind at least ten (10) feet from the **ground water monitoring** well being ~~monitored.~~ **sampled.**

(vii) If the permittee chooses to use a peristaltic pump, it must be used in accordance with the following:

(AA) The peristaltic pump must only be used in a **ground water monitoring** well with a depth of thirty-three (33) feet or less.

(BB) Historical data and tubing manufacturer data sheets must be utilized to select the proper tubing for each site.

(CC) Water in the tubes must be evacuated ~~between wells.~~ **after each ground water monitoring well is sampled.**

(DD) The tubes must be decontaminated ~~between wells.~~ **after each ground water well is sampled.**

(B) Evacuation may be accomplished with a bailer. If a bailer is used, the following requirements must be satisfied:

(i) The **ground water monitoring** well must be purged a minimum of three (3) well volumes if the ground water recharge rate is greater than the ground water withdrawal rate.

(ii) The **ground water monitoring** well may be purged dry if the ground water recharge rate is less than the ground water withdrawal rate.

(iii) Purging a **ground water monitoring** well more than five (5) well volumes is prohibited.

(iv) The bailer must be made of Teflon®, PVC, stainless steel, or other material approved by the commissioner.

(v) To assure that volatile organics are not stripped from the water, the bailer must be lowered in a slow and steady manner until the top of the ground water is contacted.

(vi) The bailer must be lowered into the water column until the bailer is full or the base of the **ground water monitoring** well is contacted by the bottom of the bailer.

(vii) Once full of water, the bailer must be lowered no further into the water column.

(viii) The bailer cord must not touch or contact the water column.

(ix) To assure that volatile organics are not stripped from the water, the bailer must be withdrawn at a slow steady rate up the **ground water monitoring** well casing.

(x) When the bailer reaches the top of the **ground water monitoring** well riser, the bailer must be removed carefully to prevent aeration or agitation.

(xi) The bailer cord must be pulled away from the water when pouring from a top discharging bailer.

(C) The MSWLF's sampling and analysis plan must designate methods for disposal of purged water and decontamination solutions.

(D) The commissioner shall consider a **ground water monitoring** well to be dry under the following circumstances:

(i) The **ground water monitoring** well is not mechanically damaged, yet it is unable to deliver water when opened for sampling.

(ii) The **ground water monitoring** well does not have a recovery rate adequate to supply ground water for sampling within a twenty-four (24) hour period after the monitoring well is purged.

(E) A **ground water monitoring** well that is dry on a consistent basis may be deemed by the commissioner to be an improperly functioning **ground water monitoring** well. The owner, operator, or permittee may be required to replace or relocate any improperly functioning **ground water monitoring** well.

(6) Upon request, the commissioner may approve use of equipment or methods not specified in subdivision (5). The alternative equipment must provide equivalent evacuation efficiency and the request must include:

(A) an exact description of the purging or sampling apparatus;

(B) operational specifics of the apparatus; and

(C) an explanation of why the proposed sampling equipment is equivalent or superior to the equipment specified under subdivision (5) for:

(i) accuracy of readings;

(ii) minimization of cross contamination;

(iii) suitability of the equipment to the site; and

(iv) ease of decontamination, when applicable.

(7) Ground water monitoring sample collection for detection monitoring, verification resampling, assessment, and corrective action ground water monitoring programs must satisfy the following requirements:

(A) Each sample must be numbered and labeled as a separate sample.

(B) One (1) or more independent samples must be collected from every ground water monitoring well on-site or as otherwise specified by the commissioner.

(C) At least one (1) field duplicate sample must be collected as follows:

(i) A field duplicate sample is defined as an additional sample collected from a ground water monitoring well, where:

(AA) the additional sample is analyzed independently of the first sample obtained from that **ground water monitoring** well; and

(BB) the ground water quality results for the additional sample are not used in the statistical evaluation, unless approved by the commissioner.

(ii) The field duplicate sample must be treated in the same manner as the independent sample.

(iii) A field duplicate sample must be collected from one (1) **ground water monitoring** well for every ten (10) **monitoring** wells, or part thereof, sampled.

(iv) The field duplicate sample must not be identified as such to the laboratory performing the sample analysis.

(D) The first sample collected from a given **ground water monitoring** well must be listed on the field record as the independent sample. The additional sample from the given **monitoring** well must be listed on the field record as the field duplicate sample.

(E) The independent sample and the field duplicate sample must be collected consecutively. The equipment for obtaining the samples does not require decontamination between sample collection; however, the independent sample and the field duplicate sample must be analyzed independently of each other.

(F) At least one (1) trip blank sample must be taken and must meet the following requirements:

(i) Be containerized prior to entering the MSWLF.

(ii) Consist of water that is:

(AA) distilled;

(BB) deionized; or

(CC) laboratory grade water.

(iii) Be analyzed for all constituents required for the sampling event unless a justification for limiting the trip blank to specific constituents is submitted to and approved by the commissioner.

(iv) Accompany the independent samples at all times.

(v) The trip blank must be identified as such to the laboratory performing the sample analysis.

(G) At least one (1) equipment blank sample must be collected from each piece of nondedicated equipment used to collect samples at the site, in accordance with the following:

(i) The water used for the equipment blank sample collection must be either distilled water or deionized water.

(ii) The equipment to be sampled must include:

(AA) all nondedicated pumps and bailers;

(BB) intermediate containers;

(CC) probes used for measuring static water levels, if the probe is inserted into the **ground water monitoring** well after the well is purged; and

(DD) reusable sections of the field filtration equipment.

(iii) The equipment blank must be analyzed for all constituents required by the sampling event unless a justification for limiting the equipment blank to specific constituents is submitted to and approved by the commissioner.

(iv) The equipment blank must be obtained after the last **ground water** monitoring well has been sampled.

(v) The equipment blank must be identified as such to the laboratory performing the sample analysis.

(H) At the end of each sampling day, the sampler may collect at least one (1) field blank sample. If a field blank sample is collected, the following criteria must be met:

(i) The water used for the sample must be distilled water or deionized water brought onto the site and poured into the designated sample bottles within fifty (50) feet from any ground water monitoring well sampled the day the field blank is collected.

(ii) Field blank samples must be analyzed for all constituents required for the sampling event unless a justification for limiting the field blank to specific constituents is submitted to and approved by the commissioner.

(iii) The field blank must be identified as such to the laboratory performing the sample analysis.

(8) Ground water samples must be collected in a sequence that satisfies the following:

(A) **Ground water monitoring** wells must be sampled in a sequence that minimizes the potential for cross contamination of samples. Historical ground water quality data must be used in estimating a well's potential for contamination. Samples must be collected in order of increasing likelihood of contamination in the **monitoring** well supplying the sample as follows:

(i) All ~~upgradient~~ **background** ground water monitoring wells must be sampled before downgradient wells.

(ii) If downgradient **ground water monitoring** wells have not been verified to be contaminated, samples must be collected first from those downgradient **monitoring** wells that are furthest from disposed solid waste, followed by **monitoring** wells that are increasingly close to disposed solid waste.

(iii) Downgradient **ground water monitoring** wells that have been verified as contaminated must be sampled in sequence, starting with those downgradient **monitoring** wells that have the lowest level of contaminants, followed by **monitoring** wells that have increasingly higher levels of contaminants.

(B) Samples must be collected in a sequence that minimizes volatilization of compounds. Samples must be collected in order of decreasing volatility as follows:

(i) For the constituents listed in section 15(a) of this rule (Table 1A) and section 15(b) of this rule (Table 1B):

(AA) volatile organic compounds;

(BB) field pH;

(CC) field specific conductance;

(DD) dissolved metals; and

(EE) all other constituents.

(ii) For the constituents listed in section 16 of this rule (Table 2):

(AA) volatile organic compounds;

(BB) field pH;

(CC) field specific conductance;

(DD) semivolatile organics;

(EE) dissolved metals;

(FF) total metals; and

(GG) all other constituents.

(C) A sample collection sequence for the constituents listed in section 15(a) of this rule (Table 1A), section 15(b) of this rule (Table 1B), and section 16 of this rule (Table 2) must be developed for use in the event that a ground water monitoring well cannot supply sufficient water volume to collect a full sample. To establish the sample collection sequence, the owner, operator, or permittee shall consider:

(i) **ground water monitoring** well logs; and

(ii) previous sample data.

(9) All nondedicated equipment must be decontaminated in accordance with the following requirements:

(A) Decontamination procedures must be implemented after sample collection at each **ground water monitoring** well and before reuse of the equipment. Time of decontamination must be indicated on the field report sheet. The commissioner may approve alternate decontamination procedures that provide equally reliable prevention of cross contamination.

(B) If a rotary pump is used, then the following decontamination procedures must be implemented:

(i) The interior, exterior, and tubing must be decontaminated.

(ii) The exterior of the rotary pump must be washed with a nonphosphate detergent and potable water bath. The exterior of the rotary pump must be rinsed in potable water and double rinsed in deionized or distilled water.

(iii) The pump must have a volume of a nonphosphate detergent water mixture pumped through the system equal to one-third (a) of the previous **ground water monitoring** well's purge volume or two (2) gallons, whichever is less, to remove all pumped water from the internal parts. This solution must be pumped through the pump head and then continued through the tubing until ejected from the system.

(iv) A gross rinse of potable water must follow the detergent mixture specified in item (iii). The rinse water volume must match the volume specified in item (iii).

(v) If samples are acquired from the pump, a minimum of three (3) gallons of distilled or deionized water rinse must be pumped through the system prior to sampling the next **ground water monitoring** well.

(vi) The commissioner may approve an alternative decontamination procedure provided the alternative procedure yields equally reliable prevention of cross contamination.

(C) If a peristaltic pump is used, then the following decontamination procedures must be implemented:

(i) The tubing must be decontaminated.

(ii) After each water sample passes through the pump, a

volume of distilled or deionized water and nonphosphate detergent solution equal to the sample volume must be immediately passed through the pump.

(iii) The detergent solution must be followed by a potable water rinse. The volume of the rinse must be three (3) times the detergent solution volume.

(D) If a bailer is used, then the following decontamination procedures must be implemented:

(i) ~~Proper equipment must be utilized to decontaminate~~ The internal, external, and valve components of the bailer **must be decontaminated.**

(ii) Nondedicated bailers must be decontaminated on-site prior to obtaining samples from the next **ground water monitoring** well. Decontamination must consist of, in the following order:

(AA) Washing the interior and exterior surfaces of the bailer with a nonphosphate detergent solution.

(BB) Rinsing with potable water.

(CC) Final double rinsing with distilled or deionized water.

(iii) Dedicated bailers that are either stored at a site away from the sampling point, or stored in the **ground water monitoring** well riser and above the maximum ground water level must be double rinsed with distilled or deionized water prior to use. Bailers must not be stored below the ground water level in the **monitoring** well.

(iv) Teflon® coated wire and any water level probe must be:

(AA) submerged in a nonphosphate detergent bath;

(BB) abraded by a clean cloth as the wire is removed from the wash bath;

(CC) deposited into a gross rinse bath of potable water; and

(DD) lifted as a coil and placed in a final distilled or deionized water rinse.

(v) A rope attached to the bailer or lead wire must not be reused.

(E) Meters that measure for specific conductance, temperature, Eh, and pH must be washed with a nonphosphate detergent solution and rinsed with a volume of deionized water equal to a minimum of four (4) times the volume used by the meter for effective readings. ~~unless nonphosphate detergent~~ **If this procedure** will inhibit the ~~meter's~~ ability **of the meter** to function, ~~properly.~~ **the meter must be washed in accordance with the manufacturer's instructions.**

(10) **Ground water** monitoring well samples must be collected in containers that are specified in either the MSWLF's sampling and analysis plan or the quality assurance project plan described in subdivision (13). ~~The commissioner may establish guidance regarding the following:~~

~~(A) Recommended preservatives.~~

~~(B) Bottle material composition.~~

~~(C) Minimum sample volumes.~~

~~(D) Refrigeration after sample collection.~~

~~(E) The prevention of exposure to direct radiation.~~

(11) Field meters for pH, Eh, and specific conductance must be as follows:

(A) have accuracy of readings that do not vary more from a standard value than the following:

(i) Three percent (3%) of the reading for a suitable standard for specific conductance.

(ii) Twenty-five (25) millivolts of the indicator solution for Eh.

(iii) One-tenth (0.1) standard unit of the calibration standard value for pH.

(B) be calibrated at the beginning and end of each day of a sampling event, or more frequently if recommended by a manufacturer's specifications, in accordance with the following:

(i) The calibration solutions of high, low, and midrange values must be retained on-site during the sampling event for potential use at every sampling point.

(ii) Calibrations must be conducted as specified by the manufacturer of the equipment.

(12) The sampler shall submit to the commissioner a field report for every sampling event. The report must include the following information pertaining to each ground water monitoring well **and piezometer, when applicable:**

(A) The time and date each **ground water monitoring** well was purged and sampled.

(B) The location of each **ground water monitoring** well that was sampled, including indicating the **monitoring** well as ~~upgradient~~ **background** or downgradient of the solid waste boundary.

(C) The condition of **ground water monitoring** well heads **and piezometers** and **monitoring** well security devices.

(D) The weather conditions during sample collection.

(E) The condition of purged water with regard to odor and turbidity, and the condition of the collected sample.

(F) The in situ temperature, in degrees Celsius, of the ground water as measured in line or immediately after removal of water from the **ground water monitoring** well.

(G) The static water elevations referenced to mean sea level and measured to the nearest one-hundredth (0.01) foot.

(H) The type of equipment used for purging and for collection of samples and, where applicable, the cord's chemical composition.

(I) A copy of the chain of custody for the sample.

(J) The location and elevation of the referenced measuring mark on the **ground water monitoring** well **and piezometer** casing used to measure the static water elevations.

(K) The time equipment was decontaminated at each **ground water monitoring** well location.

(L) The reaction of the ground water to the preserving agent when the sample is containerized.

(M) Additional information as required by the commissioner **based on particular site or facility conditions.**

(13) The owner, operator, or permittee of an MSWLF shall

develop a quality assurance project plan and submit the following items to the commissioner for approval:

(A) Documentation to verify that all laboratories performing ground water sample analysis intend to comply with the minimum standards set forth in the facility's quality assurance project plan.

(B) One (1) scientifically valid and accurate testing method approved by the commissioner for each constituent required for analysis under this rule.

(14) Each owner, operator, or permittee of an MSWLF shall develop and utilize a chain of custody protocol to account for the possession and security of any sample from the time the sample is taken until the analytical results are received by the commissioner. The chain of custody protocol must conform with the following:

(A) The field chain of custody form must account for the sample from the time the sample is removed from the **ground water monitoring** well until the time the sample is delivered to the laboratory and the sample custodian of the analytical laboratory signs the field chain of custody form.

(B) The laboratory chain of custody form must account for the location and security of the sample from the sample's arrival at the analytical laboratory until the analysis of the sample is found to be acceptable under the quality assurance plan.

(C) Field and laboratory chain of custody forms must identify each sample with its unique identifying number and include the following information:

(i) The number and types of containers holding the sample.

(ii) The names of all persons having contact with the sample, including those persons collecting or transporting the sample.

(iii) The time and dates of any transfers in possession of a sample.

(iv) The condition of the sample at the time of its arrival at the laboratory, including the condition of the sample's seal and the temperature inside each cooler holding a sample.

(D) In addition to the information required under clause (C), the field chain of custody form must include a task sheet that delineates the analysis to be performed on the sample or samples.

(E) The laboratory must maintain the laboratory chain of custody form and, upon request, release the laboratory chain of custody form to the commissioner. The field chain of custody form must be submitted to the commissioner in accordance with section ~~1(t)~~ **1(s)** of this rule.

(c) Upon request, the commissioner may approve the use of methods, procedures, or equipment not specified in subsection (b). The alternative methods, procedures, or equipment must provide results or measurements that are equivalent in accuracy and reliability and the request must include the following:

(1) an exact description of the alternative methods, procedures, or equipment; and

(2) an explanation of why the proposed methods, procedures, or equipment are equivalent or superior to those specified under subsection (b).

(Solid Waste Management Board; 329 IAC 10-21-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1858; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2794; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3839; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1830, eff Apr 1, 2004)

SECTION 75. 329 IAC 10-21-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-4 Ground water monitoring well and piezometer construction and design

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

Sec. 4. (a) Ground water monitoring wells **and piezometers** installed after ~~the effective date of this article~~ **April 13, 1996,** must comply with the requirements of this section.

(b) The following drilling techniques must be used to ensure proper ground water monitoring well construction:

(1) The method of drilling a borehole for a **ground water** monitoring well or for exploration must be selected to ensure the following:

(A) Subsurface materials are not adversely affected.

(B) Ground water or aquifers are not contaminated or cross-contaminated.

(C) Quality continuous unconsolidated and consolidated material samples are collected.

(D) Equipment sensitivity allows adequate determination of an appropriate screen location.

(E) The diameter of the borehole is at least four (4) inches larger than the diameter of the **ground water monitoring** well casing and screen, to allow tremie placement of the filter pack and annular sealants.

(F) Drill fluids other than water ~~fluid additives, or lubricants~~ are to be avoided **when possible.** However, if ~~they~~ **fluid additives or lubricants** are unavoidable, those used must be demonstrated to be inert and an impact statement must be made regarding the potential impact of any liquids introduced into the borehole ~~concerning~~ **on** the physical and chemical characteristics of the subsurface and ground water.

(2) All equipment that will encounter formation materials must be decontaminated prior to drilling each new borehole.

(c) Casing and screen materials must comply with the following:

(1) Casing and screen materials must be chosen to:

(A) be resistant to corrosion and degradation in any natural or contaminated environment;

(B) be resistant to physical damage as a result of installa-

tion, usage, and time; and

(C) have minimal effect on ground water chemistry with respect to the analytes of concern.

(2) The casing sections must be physically joined and made watertight by:

(A) heat welding;

(B) threading; or

(C) force fitting.

(3) The use of solvents, glues, or other adhesives to join casing sections is prohibited.

(4) **For:**

(A) ground water monitoring wells, the casing must be two (2) inches in diameter or greater; **or**

(B) piezometers not to be used for sample collection, the diameter must be one (1) inch or greater.

(5) Except for open borehole bedrock **ground water monitoring** wells, screens are required for all ground water monitoring wells **and piezometers** and must include the following:

(A) The screens must be continuous slot wire or machine slotted.

(B) Slot size must retain ninety percent (90%) to one hundred percent (100%) of the filter pack material.

(C) Screen lengths must be not less than two (2) feet and not greater than ten (10) feet unless approved by the commissioner **based on site-specific conditions.**

(6) **Ground water monitoring** well **and piezometer** casing and screens must be cleaned prior to introduction into the borehole to prevent manufacturers' residues and coatings from contaminating the borehole or aquifer.

(7) Screen and casing must be properly centered in the borehole prior to filling the annulus.

(d) Procedures for collecting, analyzing, and storing core samples must comply with the following:

(1) Continuous downhole samples of the unconsolidated and consolidated materials must be collected in all ground water monitoring well **and piezometer** boreholes **unless the ground water monitoring wells or piezometers are replacement monitoring wells or piezometers under section 1(g)(2)(B)** *[of this rule]***.** For monitoring well clusters **or piezometer clusters,** continuous samples must be collected from the surface to the base of the deepest **monitoring** well **or piezometer;** other **monitoring** wells **or piezometers** within the cluster must be sampled at all significant stratigraphic changes and at the screened interval. Samples must not be combined into composite samples for classification or testing.

(2) All procedures regarding testing and sampling must be described to the commissioner in writing.

(3) The owner, operator, or permittee shall:

(A) retain all borehole samples in labeled containers or labeled core boxes that are securely stored and accessible for a period of:

(i) seven (7) years after the samples are collected; or

(ii) seven (7) years after permit issuance;

whichever occurs later;

(B) notify the commissioner, in writing, of the location of the core sample storage; and

(C) ensure that core samples are available for inspection, by the commissioner or by a representative of the department, at all reasonable times or during normal operating hours.

(4) Each significant stratum encountered in the borehole must have the following analysis performed and testing results must be identified with respect to sample elevations and borehole:

(A) Complete grain size using the following techniques:

(i) Sieve.

(ii) Hydrometer.

(B) Cation exchange capacity.

(C) Hydraulic conductivity if the information **in this subsection** for that strata is not available to the satisfaction of the commissioner.

~~(D) Atterberg limits.~~

(e) The ground water monitoring well **or piezometer** annulus must be filled as follows when drilling is complete:

(1) The annular space from six (6) inches below the well screen to two (2) feet above the well screen must be filled with a filter pack consisting of inert sand or gravel and shall comply with the following:

(A) A uniform grain size must be chosen to reflect three (3) to five (5) times the average fifty percent (50%) retained size of the formation material unless this filter pack grain size would impede adequate flow of ground water into the **ground water monitoring** well **or piezometer.** Should this happen, a filter pack grain size shall be used that allows ground water flow into the **monitoring** well **or piezometer** and prevents as much silt infiltration as possible.

(B) Natural material may be an acceptable constituent of the filter pack if slump is unavoidable.

(C) The filter pack in a bedrock **monitoring** well **or piezometer** is optional. However, if used, the filter pack must be of a nonreactive coarse sand or gravel.

(D) The upper one (1) to two (2) feet of the filter pack must be of fine, inert sand to prevent infiltration of seal materials.

(E) The filter pack must be emplaced without bridging, preferably by tremie pipe, or other methods as approved by the commissioner **to ensure the integrity of the filter pack.**

(2) A bentonite seal of at least three (3) feet must be emplaced by tremie pipe in the annular space directly above the filter pack.

(3) The annular space from the bentonite seal to one (1) foot below the frost line must be tremied with a grout of bentonite, cement/bentonite, or other shrinkage-compensated, low permeability fill and shall include the following:

(A) All bentonite and cements must be mixed to the manu-

facturer's specifications.

(B) Full hydration, curing, or setting of the bentonite seal must occur prior to further backfilling as required by this subdivision.

(4) A surface seal of neat cement or concrete must be installed in the remaining borehole annular space above the intermediate fill, including the following:

(A) The apron of the surface seal must be designed to prevent ponding and infiltration by extending at least two and five-tenths (2.5) feet from the **ground water monitoring** well casing.

(B) The apron must slope at least fifteen (15) degrees outward.

(C) A locking protective metal casing must be installed around the **ground water monitoring** well casing and be anchored below the frost line in the surface seal.

(D) A vent hole or vented cap must be placed at the top of the **ground water monitoring** well **or piezometer** casing to allow accurate piezometric variation and to prevent gas build-up.

(E) The annular space between the **ground water monitoring** well casing and the protective metal casing must be neat cement filled to a level at least one (1) inch higher than that of the surrounding apron.

(F) A drainage hole must be drilled in the protective metal casing immediately above the cement fill specified in clause (E).

(G) The remaining annular space between the **ground water monitoring** well casing and the protective metal casing must be filled with a fine gravel.

(H) A weather resistant lock must be dedicated to the ~~unit~~ **ground water monitoring well** and must be serviced twice a year and when the **ground water monitoring** well is sampled.

(I) A permanent unique identification must be affixed to each ground water monitoring well and the identification must be visible.

(J) Three (3) foot bumper guards or other suitable protection may be required by the commissioner to prevent vehicular traffic from damaging the protective metal casing.

(f) The permittee shall provide ten (10) days' advance notification **to the department** of the date and time of the installation of the monitoring wells **or piezometers.**

(g) Development of ground water monitoring wells must occur as soon as possible after the seal and grout have set and must conform with the following:

(1) All **ground water** monitoring wells must be developed in such a way as to:

(A) allow free entry of formation water;

(B) minimize turbidity of the sample; and

(C) minimize clogging of the **monitoring** wells.

(2) Development methods chosen must be appropriate for the stratigraphic conditions.

(3) An in situ hydraulic conductivity test must be performed after the **ground water monitoring** well has been properly developed.

(h) Diagrammatical borehole drilling logs for all ground water monitoring wells **and piezometers** must be of similar scale and include the following information:

(1) The monitoring well **or piezometer** and borehole identification.

(2) The date of drilling.

(3) The method of drilling.

(4) The borehole diameter.

(5) The method of obtaining consolidated material and unconsolidated material.

(6) The type of any drill fluids, fluid additives, or lubricants other than water that have been used.

(7) Penetration measurements, such as hammer blow counts, penetrometer measurements, or other acceptable penetration measurements.

(8) The sample recovery measured to the nearest one-tenth (0.1) foot.

(9) Consolidated material and unconsolidated material field descriptions, including the following information:

(A) Lithology and sedimentology.

(B) Mineralogy.

(C) Degree of cementation.

(D) Degree of moisture.

(E) Color as referenced from soil color charts such as the Munsell soil charts.

(F) Grain size and textural classification of unconsolidated samples as referenced from the United States Department of Agriculture **(USDA)** textural classification charts. Grain-size divisions shall be based on a modified form of the Wentworth grain-size scale defined under 329 IAC 10-2-206.3. A determination shall be made of the percentage and grades of coarse fragments greater than two (2) millimeters in size based on 329 IAC 10-2-206.3 in addition to the USDA textural classification. Consolidated samples must be described using accepted geological classification systems and nomenclature. A clear description of the classification system used must be included with the logs.

(G) Any other physical characteristics of the consolidated material and unconsolidated material such as scent, staining, fracturing, and solution features.

(H) The percent recovery and rock quality designation.

(I) Other primary or secondary features.

(J) Drilling observations and appropriate details required for unconsolidated drilling logs.

(K) A clear photograph of all consolidated cores, labelled with:

(i) the date the photograph was taken;

(ii) the sample interval;

(iii) the reference scale;

(iv) the reference color scale; and

(v) the identification of the borehole.

(L) Interval of continuous samples and unconsolidated

material test data.

(10) Distance to and depth of any water bearing zones, measured to the nearest one-hundredth (0.01) foot.

(11) Static water elevations measured to the nearest one-hundredth (0.01) foot and indicating the dates and times the measurements were taken.

(12) The elevation of permanent **monitoring** wells **or piezometers** at the ground surface to the nearest one-tenth (0.1) foot, with the referenced measuring mark measured to the nearest one-hundredth (0.01) foot relative to the National Geodetic Vertical Datum.

(13) The horizontal location of permanent **monitoring** wells **or piezometers** measured to the nearest thirty (30) cm using Universal Transverse Mercator (UTM) coordinates.

(14) Total borehole depth and elevation measured to the nearest one-hundredth (0.01) foot.

(15) Elevation range of screened interval measured to the nearest one-hundredth (0.01) foot.

(i) ~~Diagrammatical~~ **The** construction **details** and ~~design logs~~ **diagrams** of all pertinent ground water monitoring wells must **be recorded on logs and** include the following information:

(1) The monitoring well identification and UTM coordinates as described under subsection (h)(13).

(2) The composition of **monitoring** well and protective casing materials.

(3) The type of joints and couplings between **monitoring** well casing segments.

(4) The elevations of the ground ~~water~~ surface to the nearest one-tenth (0.1) foot and of the referenced measuring mark at the top of the **monitoring** well casing measured to the nearest one-hundredth (0.01) foot relative to the National Geodetic Vertical Datum.

(5) The diameter of **monitoring** well casing and borehole.

(6) The elevation of the bottom of the borehole and the depth of the borehole measured to the nearest one-hundredth (0.01) foot.

(7) The screen slot size.

(8) The elevation range of the screened interval measured to the nearest one-hundredth (0.01) foot.

(9) The screen length measured to the nearest one-hundredth (0.01) foot.

(10) Methods of installation of the annular fill.

(11) The elevation range and the depth of the filter pack measured to the nearest one-hundredth (0.01) foot.

(12) The length of the filter pack.

(13) The grain size and composition of all filter pack materials and the fifty percent (50%) retained size of the formation material **when** used to determine **the grain size of the** filter pack materials.

(14) The elevation and depth range of the bentonite seal above the filter pack measured to the nearest one-hundredth (0.01) foot.

(15) The thickness of the bentonite seal above the filter pack.

(16) The composition of annular fill.

(17) The elevation range, depth range, and thickness of annular fill measured to the nearest one-hundredth (0.01) foot.

(18) The composition and design of the surface seal.

(19) The design and composition of materials used for the protection of the **monitoring** well casing.

(j) The construction details and diagram of each piezometer must be recorded on logs and include the following:

(1) Piezometer identification number and UTM coordinates.

(2) Elevation of the top of the piezometer casing.

(3) Height of piezometer casing above the ground.

(4) Elevation of the ground surface.

(5) Elevation and depth to the bottom of the borehole.

(6) Diameter of piezometer casing and borehole.

(7) Elevation and depth to the bottom and top of the piezometer screen.

(8) Length of piezometer casing.

(9) Composition of piezometer casing materials and piezometer screen material.

(10) Length of piezometer screen.

(11) Screen slot size.

(12) Type of joints or couplings, or both, between casing segments.

(13) Elevation and depth to the top and bottom of the gravel filter pack surrounding the piezometer screen.

(14) Length of the gravel filter pack.

(15) Elevation and depth of the bottom of the piezometer casing.

(16) Elevation and depth of the top and bottom of the seal above the gravel filter pack.

(17) The grain size and composition of all filter pack materials and the fifty percent (50%) retained size of the formation material when used to determine the grain size of the filter pack materials.

(18) Thickness of the seal above the gravel filter pack.

(19) Elevation and depth of the annular seal above the gravel filter pack seal.

(20) Thickness of the annular seal.

(21) Material used for the annular seal.

(22) Method of installation of the annular seal.

(23) The composition and design of the surface seal.

(Solid Waste Management Board; 329 IAC 10-21-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1864; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2799; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3845; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1835, eff Apr 1, 2004)

SECTION 76. 329 IAC 10-21-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-6 Statistical evaluation requirements and procedures

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

Sec. 6. (a) The owner, operator, or permittee shall determine if there is a statistically significant increase for each constituent

analyzed, except for constituents listed in section 15(b) of this rule (Table 1B). This statistical evaluation is required each time ground water is collected and analyzed at the monitoring boundary for all MSWLFs.

(b) To determine a statistically significant increase compared to the background ground water quality, each constituent from each ground water monitoring well sample must be compared to the background ground water quality of that constituent, according to the statistical procedures and performance standards specified in this section.

(c) The owner, operator, or permittee shall submit to the commissioner for approval a written statistical evaluation plan for each ground water monitoring program required under this rule. Submittal of the plan must comply with the following:

(1) For all new MSWLFs and lateral expansions to be permitted under this article, the **statistical evaluation** plan ~~must~~ **shall** be **developed in accordance with the general description** submitted ~~before the first sampling event occurs following permit issuance or as otherwise specified by the commissioner.~~ **under 329 IAC 10-15-1(a)(12).**

(2) For existing MSWLFs, the plan must be submitted with the next renewal application, at the time of closure, or as specified by the commissioner, whichever occurs first, unless a statistical evaluation plan that includes all applicable requirements under this section has been previously submitted.

(3) The plan must explain which of the various statistical methods, described in subsection (f), may be needed to address a continuously expanding ground water data base. All statistical methods must meet the performance standards outlined in subsection (g).

(4) The plan must identify the statistical procedures to be used whenever verification resampling, as specified under section 8 of this rule, is implemented.

(5) The plan must identify any computer data management or statistical evaluation program used by the owner, operator, or permittee and, upon request by the commissioner, include appropriate documentation of the computer program.

(d) Changes to the statistical evaluation plan must not be implemented without approval from the commissioner.

(e) The owner, operator, or permittee shall submit a statistical evaluation report of the ground water sample analysis to the commissioner. The report must be submitted within sixty (60) days after obtaining ground water samples from the ground water monitoring wells, unless a verification resampling program described under section 8 of this rule, is implemented. The statistical evaluation report must include the following:

(1) All input data, output data, and equations used for all calculations and statistical tests utilized.

(2) A detailed discussion of the conclusions from the statistical evaluation. This discussion must include the identification of all constituents found to have a statistically significant increase.

(3) A graphical representation of the MSWLF's ground water data when requested by the commissioner. The commissioner shall ~~provide guidance in preparing graphics.~~ **specify the format of the graphical representation.**

(f) Any of the following statistical procedures may be chosen for the statistical evaluation, provided the chosen statistical procedure is capable of meeting the performance standards in subsection (g):

(1) A parametric analysis of variance (ANOVA) followed by multiple comparison procedures to identify a statistically significant increase. The method must include estimation and testing of the contrasts between each downgradient ground water monitoring well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each downgradient ground water monitoring well's median and the background ground water quality median levels for each constituent.

(3) A tolerance or prediction interval in which an interval for each constituent is established from the distribution of the background ground water quality data, and the level of each constituent in each downgradient ground water monitoring well for the most recent sampling event is compared to the upper tolerance limit or upper prediction limit.

(4) A control chart, which establishes control limits for each constituent.

(5) A temporal or spatial trend analysis.

(6) Another valid statistical test method that meets the performance standards of subsection (g).

(g) The statistical procedures and methods used must comply with the following performance standards:

(1) The statistical procedure used to evaluate ground water monitoring data must be appropriate for the data distribution of each constituent. If the data distribution of a constituent is shown to be inappropriate for a normal theory test, then either the data must be transformed or a distribution-free statistical test must be used. If data distributions for the constituents differ, more than one (1) statistical method may be needed.

(2) If ground water data from an individual **ground water** monitoring well is compared either to background ground water quality, which may include pooled ~~upgradient ground water~~ **background** monitoring well data from more than one (1) well, or to a ground water protection standard, then the test must be done at a Type I error level that is no less than one-hundredth (0.01) for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period must be no less than five-hundredths (0.05); however, the Type I error rate of no less than one-hundredth (0.01) for individual **monitoring** well comparisons must be maintained. This performance standard

does not apply to:

(A) tolerance intervals;

(B) prediction intervals; and

(C) control charts.

(3) The validity of the statistical test **method** used must be evaluated prior to applying the method to the ground water data. This evaluation must address:

(A) the error potential for false positives and false negatives; and

(B) any other evaluation deemed necessary by the commissioner **to confirm that the test method chosen will sufficiently detect contamination.**

(4) If a control chart is used to evaluate ground water monitoring data, the specific type of control chart and associated statistical parameter values must be protective of human health and the environment. These values must be determined after considering:

(A) the number of background samples;

(B) the background data distribution; and

(C) the range of background concentrations for each constituent analyzed.

(5) If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be protective of human health and the environment. These statistical parameters must be determined after considering:

(A) the number of background samples;

(B) the background data distribution; and

(C) the range of background concentrations for each constituent analyzed.

(6) The statistical method must account for data below the limit of detection with one (1) or more statistical procedures. Any practical quantitation limit that is used in a statistical procedure must:

(A) be the lowest concentration limit that can be repeatedly and reliably achieved; and

(B) be within specified limits of precision and accuracy during routine laboratory operating conditions.

(7) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability.

(Solid Waste Management Board; 329 IAC 10-21-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1866; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2802; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3848; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1838, eff Apr 1, 2004)

SECTION 77. 329 IAC 10-21-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-7 Detection ground water monitoring program

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

Sec. 7. (a) A detection ground water monitoring program that satisfies the following requirements is required for all MSWLFs:

(1) Within the six (6) months following the scheduled date of compliance that is specified in section 1(a) of this rule, a minimum of four (4) independent background samples from each approved ground water monitoring well must be collected and analyzed for the constituents listed in section 15(a) of this rule (Table 1A). If a background data base, comprising data from every monitoring well approved by the commissioner and every constituent listed in section 15(a) of this rule (Table 1A), has been previously established, then additional independent samples are not required for the purpose of establishing background.

(2) Any **ground water monitoring** well installed after the scheduled date of compliance specified in section 1(a) of this rule and designated for detection monitoring must have minimum number of independent samples collected and analyzed for the constituents listed in section 15(a) of this rule (Table 1A). The minimum number of independent samples must satisfy the chosen statistical procedures and performance standards under section 6 of this rule.

(3) Subsequent sampling events during the active life, closure, and post-closure periods of the MSWLF must include the collection and analysis of at least one (1) independent sample from each approved **ground water** monitoring well. These samples must be analyzed for all constituents in section 15 of this rule (Table 1A and Table 1B). The detection monitoring frequency must be at least semiannual during the active life, closure, and post-closure periods.

(4) The commissioner may specify an alternative frequency for detection monitoring that must comply with the following:

(A) The alternative frequency must be no less than annual.

(B) The alternative frequency must be based on consideration of the following factors:

(i) Sedimentology of the aquifer and unsaturated zone.

(ii) Hydraulic conductivity of the aquifer and unsaturated zone.

(iii) Ground water flow rates.

(iv) Minimum distance between the upgradient permitted solid waste boundary and the downgradient ground water monitoring well screen.

(v) Resource value of the aquifer.

(vi) The fate and mode of transport of any constituents detected in response to detection monitoring.

(vii) Constituent concentrations recorded at the date of alternative frequency selection.

(5) The owner, operator, or permittee must determine, based on the results of sample collection and analysis performed in accordance with this subsection, whether any statistically significant increase in concentration has occurred for any constituent listed in section 15(a) of this rule (Table 1A). In order to make this determination, the owner, operator, or permittee must compare the samples to:

(A) background ground water quality;

(B) a ground water protection standard that has been established from a previous assessment ground water monitoring

program conducted under section 10 of this rule; or

(C) a ground water protection standard that was established under 329 IAC 2-16-10, which was repealed in 1996.

(b) If a ~~statistically significant increase~~ **preliminary exceedance** in a constituent concentration has been determined, through ground water detection monitoring performed in accordance with subsection (a), the owner, operator, or permittee must accomplish the following:

(1) Notify the commissioner within fourteen (14) days of the determination. The notification must include the following:

(A) Those constituents listed in section 15(a) of this rule (Table 1A) for which a ~~statistically significant increase~~ **preliminary exceedance** in concentration has been observed and the last recorded concentration for each of those constituents.

(B) The identification of each ground water monitoring well where a ~~statistically significant increase~~ **preliminary exceedance** was observed.

(C) Whether verification procedures and sampling as described under section 8 of this rule will be pursued.

(2) Establish, within ninety (90) days of determination of a statistically significant increase, an assessment ground water monitoring program that meets the requirements of section 10 of this rule unless the owner, operator, or permittee chooses:

(A) to institute a verification program, pursuant to section 8 of this rule; or

(B) to demonstrate, pursuant to section 9 of this rule.

(c) A corrective action program may be required during a detection monitoring program if a ~~verified statistically significant increase~~ **preliminary exceedance** is **verified and is** attributable to the MSWLF and is an increase over either of the following:

(1) A ground water protection standard that has been established from a previous assessment ground water monitoring program conducted under section 10 of this rule.

(2) A ground water protection standard that was established under 329 IAC 2-16-10, which was repealed in 1996, for any constituent listed in section 15(a) of this rule (Table 1A).

(d) If, pursuant to subsection (c), the commissioner determines that a corrective action program is necessary, the owner, operator, or permittee must notify all pertinent local government officials, **including the county commissioner, officials of the solid waste management district, and the county health department,** of this determination.

(e) If the field pH for any ground water sample obtained at the monitoring boundary is determined to be above ten (10) or below five (5) standard pH units, the owner, operator, or permittee shall:

(1) within fourteen (14) days of the determination, notify the commissioner, in writing, of the identity of the **ground water monitoring** well or wells whose samples indicated an anomalous pH level, and of the corresponding pH values of those samples; and

(2) within sixty (60) days of the determination, submit a written report explaining the anomalous pH values to the commissioner. After reviewing the report, the commissioner may determine that an assessment ground water monitoring program, described under section 10 of this rule, is necessary.

(f) During detection monitoring, if arsenic (dissolved) is determined to exceed the MCL or, if established, the ground water protection standard for arsenic for any ground water sample obtained at the monitoring boundary, the owner, operator, or permittee shall notify the commissioner in writing within fourteen (14) days of the determination. The notification must include the following:

(1) The identification of each ground water monitoring well where samples indicated a concentration greater than the MCL or, if established, the ground water protection standard for arsenic.

(2) And, whether:

(A) assessment monitoring and corrective action programs under 329 IAC 10-21-10 and 329 IAC 10-21-13 *[sections 10 and 13 of this rule]* **are to be initiated; or**

(B) a demonstration, as described under section 9 of this rule, will be pursued while maintaining a detection monitoring program.

(Solid Waste Management Board; 329 IAC 10-21-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1868; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2803; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3849; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1840, eff Apr 1, 2004)

SECTION 78. 329 IAC 10-21-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-8 Verification of a statistically significant increase in constituent concentration

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

Sec. 8. (a) The owner, operator, or permittee ~~shall~~ **may** develop a verification resampling and analysis plan that will provide verification that a ~~statistically significant increase~~ **preliminary exceedance** has occurred in the concentration of one or more constituents during detection or assessment monitoring programs. This plan must:

(1) use the statistical procedures and performance standards described in section 6 of this rule to determine:

(A) the number of resamples that must be collected for verification of a ~~statistically significant increase~~ **preliminary exceedance** in constituent concentration; and

(B) the number of resamples that must fail in order to verify the ~~statistically significant increase;~~ **preliminary exceedance;**

(2) identify the MSWLF-wide false positive rate and the per-

comparison false positive rate;
(3) demonstrate that there is an acceptable balance between the false positive rate and the false negative rate;
(4) be approved by the commissioner prior to implementation; and
(5) after approval by the commissioner, be incorporated into the statistical evaluation plan.

(b) Until the owner, operator, or permittee obtains approval for a proposed verification resampling and analysis plan, a minimum of two (2) independent samples must be collected when verification of a statistically significant increase is attempted.

(c) Until the owner, operator, or permittee obtains approval for a verification resampling plan, the commissioner shall consider ~~an observed statistically significant increase~~ **a preliminary exceedance** to be verified if:
(1) any of the verification resamples confirm a statistically significant increase over background ground water quality; or
(2) the owner, operator, or permittee chooses not to institute a verification resampling program.

(d) Within fourteen (14) days following the verification resampling determination, the owner, operator, or permittee shall notify the commissioner ~~in verbal or written format,~~ of the following:
(1) The results of the verification resampling and analysis program.
(2) An intention, on the part of the owner, operator, or permittee to submit a demonstration pursuant to section 9 of this rule.

(e) The detection ground water monitoring program or the assessment ground water monitoring program shall continue throughout the verification resampling program. Progression to an assessment or corrective action ground water monitoring program shall be based on the verification resampling results, regardless of subsequent detection monitoring results if the verification resampling program extends into the next scheduled sampling event.

(f) Following the completion of a verification resampling program, a report must be submitted to the commissioner no later than sixty (60) days following the last verification resampling event or thirty (30) days prior to the next scheduled semiannual sampling event, whichever occurs first. This report must be written and include the following:
(1) All information required under section ~~1(t)~~ **1(s)** of this rule.
(2) The date the commissioner was notified as required in subsection (d).
(3) Whether the ground water monitoring program will:
(A) remain in detection monitoring or assessment monitoring;
(B) ~~initiate~~ **advance into** an assessment monitoring program; or
(C) ~~initiate~~ **advance into** a corrective action program.
(4) Whether the owner, operator, or permittee intends to make a demonstration pursuant to section 9 of this rule.
(5) Results of the verification resampling, including information required by section ~~1(t)(3)~~ **1(s)(3)** through ~~1(t)(5)~~ **1(s)(5)** of this rule.

(g) If ~~the~~ verification sampling ~~program~~ determines that a statistically significant increase did occur, the owner, operator, or permittee:
(1) must initiate an assessment ground water monitoring program that meets the requirements of section 10 of this rule or a corrective action program that meets the requirements of section 13 of this rule, whichever program is applicable; or
(2) may choose to make a demonstration pursuant to section 9 of this rule, while maintaining a detection monitoring program.

(h) The commissioner may approve an extension of the submittal deadlines required by subsection (f) if the owner, operator, or permittee:
(1) requests an extension; and
(2) provides an **adequate** explanation for the need of an extension.

(Solid Waste Management Board; 329 IAC 10-21-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1869; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3850; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1841, eff Apr 1, 2004)

SECTION 79. 329 IAC 10-21-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-9 Demonstration that a statistically significant increase or contamination is not attributable to a municipal solid waste land disposal facility unit

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

Sec. 9. (a) If a **verified** statistically significant increase in a constituent concentration has ~~been determined,~~ **occurred,** the owner, operator, or permittee may demonstrate that the **verified** statistically significant increase was caused by:
(1) a source other than the MSWLF unit;
(2) an error in sampling technique, laboratory analysis, or statistical evaluation; or
(3) natural variation in ground water quality.

(b) If the owner, operator, or permittee intends to make a demonstration under this section, the owner, operator, or permittee shall submit, within fourteen (14) days of verifying a statistically significant increase, a plan that describes:
(1) the general approach that will demonstrate that the MSWLF unit did not cause the verified statistical increase; and
(2) a schedule to complete the demonstration. Based on

previous ground water data and the thoroughness of the plan submitted under subdivision (1), the commissioner may modify the proposed schedule.

(c) If a demonstration is approved by the commissioner, the owner, operator, or permittee may continue detection ground water monitoring or assessment ground water monitoring, whichever is applicable.

(d) If ~~the owner, operator, or permittee is unable to submit~~ a ~~successful~~ demonstration **is not approved based on items listed in subsection (a), or the demonstration is not submitted** within the time frame specified in subsection (b)(2), **then** the owner, operator, or permittee shall initiate either an assessment ground water monitoring program or a corrective action program, whichever program is applicable. ~~(e) If a successful demonstration is not submitted within the time frame identified in subsection (b)(2),~~ The owner, operator, or permittee may ~~extend~~ **continue** the demonstration process while implementing an assessment ground water monitoring program or a corrective action program, whichever is applicable. If, subsequently, the extended demonstration process proves ~~successful~~ **that** the MSWLF unit **is not the source of the verified statistically significant increase, the MSWLF unit** may return to detection monitoring or assessment monitoring ~~pursuant to section 7 of this rule,~~ provided there have been no other verified statistically significant increases.

~~(f)~~ **(e)** The detection monitoring program or the assessment monitoring program, whichever is applicable, must be continued throughout the demonstration period identified in subsection (b)(2).

~~(g)~~ **(f)** The commissioner shall consider that a statistically significant increase is attributable to the MSWLF unit if the owner, operator, or permittee chooses not to demonstrate pursuant to this section. *(Solid Waste Management Board; 329 IAC 10-21-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1870; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3851; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1842, eff Apr 1, 2004)*

SECTION 80. 329 IAC 10-21-10 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-10 Assessment ground water monitoring program

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

Sec. 10. (a) Establishment of an assessment ground water monitoring program is required upon any of the following circumstances:

(1) When the owner, operator, or permittee has verified that a statistically significant increase over background levels has occurred for any constituent listed in section 15(a) of this rule (Table 1A) at any ground water monitoring well at the monitoring boundary of the MSWLF unit, and a demonstration pursuant to section 9 of this rule has not been approved by the commissioner.

(2) When the owner, operator, or permittee is engaged in a corrective action program specified under section 13 of this rule.

(3) When the owner, operator, or permittee of an existing MSWLF is conducting, as of ~~the effective date of this article,~~ **April 13, 1996,** a Phase II ground water monitoring program as specified under 329 IAC 2-16, which was repealed in 1996.

(b) The owner, operator, or permittee shall conduct an assessment ground water monitoring program in accordance with the following requirements:

(1) Within ninety (90) days after determining that the owner, operator, or permittee of an MSWLF must conduct assessment ground water monitoring, all **ground water monitoring** wells containing constituents with statistically significant elevated concentrations, and all ~~their adjacent~~ **ground water monitoring** wells **within six hundred (600) feet of the well with the statistically significant elevated concentrations and monitoring the same hydrogeologic unit of the well with the elevated concentrations,** must be sampled and analyzed for all constituents listed in section 16 of this rule (Table 2). ~~If deemed necessary,~~ The commissioner may require samples to be collected and analyzed from additional **monitoring** wells.

(2) Within fourteen (14) days after receiving certified laboratory results from the final sampling conducted under subdivision (1), the owner, operator, or permittee shall submit to the commissioner written notification of the following information for any constituent listed in section 16 of this rule (Table 2) that is detected:

(A) The identity and recorded concentration of the constituent.

(B) The identity of each ground water monitoring well where the constituent was detected.

(3) A copy of the notification required under subdivision (2) and a copy of the certified laboratory results must be placed in the operating record within thirty (30) days of receiving the original certified laboratory results.

(4) The owner, operator, or permittee shall collect and analyze a minimum of four (4) independent samples from each ground water monitoring well identified in subdivision (2) in order to establish background ground water quality. Certified laboratory analyses of the independent ground water samples must be submitted to the commissioner no later than thirty (30) days prior to the next scheduled semiannual sampling event.

(5) The owner, operator, or permittee shall establish a ground water protection standard as described in section 11 of this rule for any constituent that has been detected in ground water samples collected under subdivision (1).

(6) The owner, operator, or permittee shall, during subse-

quent sampling events, collect at least one (1) independent sample from each **ground water monitoring** well designated to be in an assessment monitoring program as identified in subdivision (2)(B). Each independent sample must be analyzed for all constituents detected and identified in subdivision (2)(A).

(c) For sampling events during assessment ground water monitoring, the commissioner may do the following:

(1) Specify an appropriate subset of ground water monitoring wells to sample and analyze for constituents in section 16 of this rule (Table 2).

(2) Specify a constituent or constituents from section 16 of this rule (Table 2) that may be deleted from the constituent monitoring list upon demonstration by the owner, operator, or permittee that the constituent to be deleted is:

(A) not reasonably expected to be in the solid waste;

(B) not derived from the solid waste;

(C) naturally occurring in the soil that underlies the site and would be soluble in ground water at the detected levels, even in the absence of the MSWLF unit; ~~or~~ **and**

(D) not a constituent of concern based on historical ground water quality.

(3) Specify a constituent or constituents that may be added to the ~~constituent~~ **assessment** monitoring **constituent** list, based on historical ground water quality, ~~or~~ **analysis of leachate derived from the MSWLF,** wastes placed in the MSWLF unit.

(4) Specify an alternate frequency for repeated sampling and analysis of the ground water for the full set of constituents in section 16 of this rule (Table 2). The sampling frequency for constituents in section 15 (Table 1A and Table 1B) may be altered, provided it is at least an annual frequency. The alternate frequency must continue throughout the active life, closure, and post-closure care periods of the MSWLF. The alternate frequency must be based on consideration of the following factors:

(A) Sedimentology of the aquifer and unsaturated zone.

(B) Hydraulic conductivity of the aquifer and unsaturated zone.

(C) Ground water flow rates.

(D) Minimum distance between upgradient solid waste boundary of the MSWLF unit and downgradient monitoring well screen.

(E) Resource value of the aquifer.

(F) The fate of any constituents detected.

(G) The mode of transport of any detected constituents.

(H) Ground water quality data.

(I) Other information as required by the commissioner for the demonstration.

(d) After establishing background ground water quality described in subsection (b)(4), subsequent semiannual sampling events must include the following:

(1) At least one (1) independent sample from all the ground water monitoring wells that are included in both detection and assessment ground water monitoring programs and any other **monitoring** wells specified by the commissioner.

(2) Analysis for all constituents included in both detection and assessment ground water monitoring programs.

(3) Determination if there is a verified statistically significant increase for all constituents identified in subdivision (2). The determination shall be in accordance with section 6 of this rule and subsection (f).

~~(3)~~ **(4)** Submittal of the information required in section ~~1(t)~~ **1(s)** of this rule.

(e) Starting from the date that an assessment ground water monitoring program is required, ground water samples must be collected and analyzed for all constituents in section 16 of this rule (Table 2) on an annual basis, or at an alternate frequency specified by the commissioner. Samples for assessment monitoring must be collected from each **ground water monitoring** well identified in subsection (b)(2)(B). For these sampling events, the owner, operator, or permittee shall:

(1) ~~for this sampling event,~~ submit written notification as described in subsection (b)(2);

(2) establish background ground water quality as described in subsection (b)(4) for any constituent that has been detected in ground water samples collected during ~~this~~ **each** sampling event;

(3) establish a ground water protection standard as described in section 11 of this rule for any constituent that has been detected in ground water samples collected during the sampling event;

(4) for subsequent sampling events following the sampling event required under this section, include sampling for all constituents listed in ~~subdivision (1);~~ **subsection (b)(2)(A);** and

(5) include the sampling event in the assessment monitoring sample event schedule.

(f) During assessment ground water monitoring, the owner, operator, or permittee shall proceed according to the following:

(1) If the concentration of ~~any~~ **a** constituent listed in section 16 of this rule (Table 2) is determined to be less than or equal to background ground water quality, for two (2) consecutive semiannual sampling events, then the owner, operator, or permittee may request from the commissioner permission to **remove the constituent from the assessment monitoring list. When the concentrations of all constituents listed in section 16 of this rule (Table 2) are determined to be less than or equal to background ground water quality, for two (2) consecutive semiannual sampling events, then the owner, operator, or permittee may request from the commissioner permission to** return to **a** detection monitoring **program.**

(2) If the concentration of any constituent listed in section 16 of this rule (Table 2) is determined to be a statistically significant increase over background ground water quality,

but below the ground water protection standard established in section 11 of this rule, then assessment ground water monitoring must continue in accordance with this section.

(3) If a statistically significant increase above the ground water protection standard is determined for any constituent listed in section 16 of this rule (Table 2), the owner, operator, or permittee shall perform the following:

(A) Notify the commissioner within fourteen (14) days of this determination. The notification to the commissioner must include the following information:

(i) A list of all constituents in section 16 of this rule (Table 2) that have a statistically significant increase above the ground water protection standard established under section 11 of this rule.

(ii) The identification of each ground water monitoring well from which samples indicated a statistically significant increase.

(iii) Whether or not the owner, operator, or permittee intends to institute verification procedures and resampling as described under section 8 of this rule.

(B) In the event that a corrective action program is to be implemented, notify all pertinent local officials, including the county commissioner, and officials of the solid waste management district and the county health department.

(C) Within ninety (90) days of a determination under this subdivision, submit to the commissioner an initial proposal for a corrective action program that is designed to meet the requirements of section 13(b) of this rule unless the owner, operator, or permittee chooses to:

(i) institute a verification resampling program described in section 8 of this rule; or

(ii) submit a demonstration pursuant to section 9 of this rule.

(D) Remain in an assessment ground water monitoring program, which the commissioner may modify.

(g) During assessment ground water monitoring, whenever the concentration of a secondary constituent identified in section 11(c) of this rule is found to exceed levels that are twice the ground water protection standard **at the monitoring boundary,** as established in section 11 of this rule, the owner, operator, or permittee shall perform the following:

(1) Notify the commissioner within fourteen (14) days of the finding. This notification must include the following information:

(A) The identity and most recent concentration of any secondary constituent found to have the excessive levels.

(B) The identification of each ground water monitoring well found to have excessive levels of a secondary constituent.

(C) Whether verification resampling, as described under section 8 of this rule, will be initiated.

(2) Submit, if so directed by the commissioner, a proposal for a corrective action program. The proposal must be submitted within ninety (90) days after receiving notification from the commissioner that the proposal is required and must be in accordance with the requirements of section 13(b) of this rule, provided the owner, operator, or permittee:

(A) does not institute a verification resampling program pursuant to section 8 of this rule; and

(B) does not choose to submit a demonstration pursuant to section 9 of this rule.

(3) Remain in an assessment ground water monitoring program, which the commissioner may modify.

(h) If it is determined that the MSWLF is the cause of concentrations exceeding the secondary maximum contaminant levels established for chloride, sulfate, and total dissolved solids at the real property boundary of the MSWLF, then the owner, operator, or permittee may be required to establish a corrective action program under section 13 of this rule to ensure that the elevated concentrations do not go beyond the real property boundary.

(i) For sampling events during assessment ground water monitoring, the commissioner may require that any of the constituents identified in Table 3 under 329 IAC 10-21-17 *[section 17 of this rule]* **be added to the assessment monitoring list based on wastes placed in the MSWLF unit, historical ground water quality, or geologic setting. Any constituent included in sampling from Table 3 must comply with all sections of this rule regarding statistical evaluation, establishment, and exceedance of the ground water protection standards.** *(Solid Waste Management Board; 329 IAC 10-21-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1870; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2806; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3852; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1843, eff Apr 1, 2004)*

SECTION 81. 329 IAC 10-21-13 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-13 Corrective action program

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

Sec. 13. (a) The owner, operator, or permittee must submit a proposal for a plume and site characterization plan, as described in subsection (b), and initiate an assessment of various corrective measures, as described in subsection (d), within ninety (90) days of determining any of the following:

(1) A statistically significant increase above any ground water protection standard, as identified in section 11(a) or 11(b) of this rule, has occurred during an assessment ground water monitoring program for any constituent that is listed in section 16 of this rule (Table 2).

(2) At the request of the commissioner, and during assessment monitoring, a secondary constituent listed under section 11(c) of this rule has exceeded levels that are twice the

ground water protection standard for that constituent.

(3) At the request of the commissioner, and during detection monitoring, a constituent listed in section 15(a) of this rule (Table 1A) has shown a concentration that is a statistically significant increase over a ground water protection standard established during a previous assessment monitoring program. Previous monitoring programs include those programs conducted under section 10 of this rule, or Phase II programs conducted under 329 IAC 2-16, which was repealed in 1996.

(b) The proposal for a plume and site characterization plan must include the following:

(1) Characterization of the chemical and physical nature of the contaminants, including vertical and horizontal extent of the release by:

(A) proposing location and installation procedures for additional assessment ground water monitoring wells, as necessary; and

(B) identification of all constituents to be analyzed during subsequent ground water sampling events.

(2) Characterization of the contaminated aquifer, limited to the area of the contamination plume. Aquifer characterization may include all of the items described in this subsection.

(3) Proposed location and installation procedures of at least one (1) additional ground water monitoring well at the facility boundary in the direction of contaminant migration.

(4) The process by which all persons who own or reside on land that directly overlies any part of the contaminated ground water plume will be notified.

(5) The process for sampling and analyzing ground water at any private or public intake, as specified by the commissioner, unless permission to sample cannot be obtained from the owner of the intake.

(6) The process by which drinking water will be supplied to all public and private ground water intakes affected by the contamination.

(7) Procedures that will be implemented to stop further migration of contaminants.

(c) Implementation of the plume and site characterization plan must include the following:

(1) Within thirty (30) days of receiving written approval of the initial corrective action proposal, the owner, operator, or permittee shall implement subsection (b)(1) through (b)(7).

(2) The owner, operator, or permittee shall submit a corrective action progress report, including any sampling and analysis results, on a semiannual basis, until the contamination has been determined to be cleaned up as defined in subsection (j).

(3) The ground water monitoring well identified in subsection (b)(3) must be sampled in accordance with section 10(b) and 10(d) of this rule.

(4) If any additional constituent is detected in the **ground water** monitoring well identified in subsection (b)(3) and that constituent exceeds its ground water protection standard at a statistically significant concentration, then the owner, operator, or permittee shall include that constituent in the sampling of the ground water monitoring wells identified in subsection (b)(1).

(5) The owner, operator, or permittee shall gather sufficient information from the plume and site characterization plan to be presented at the public meeting required in section 12 of this rule and incorporated in the final decision on an corrective action remedy as described in subsection (e).

(d) The assessment of various corrective measures must be initiated within ninety (90) days of determining that a corrective action program is necessary. The owner, operator, or permittee shall complete the assessment of various corrective measures in a reasonable time, with the approval of the commissioner, and in accordance with the following:

(1) The assessment of various corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all of the remedy requirements and objectives as described in subsection (e).

(2) The analysis must include the following:

(A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies. This shall include safety impacts, cross-media impacts, and control of exposure to any residual contamination.

(B) The time required to begin and complete the remedy.

(C) Implementation costs of the proposed remedy.

(D) The institutional requirements, such as state or local permit requirements, or other environmental or public health requirements that may substantially affect remedy implementation.

(E) A discussion by the owner, operator, or permittee of the corrective measures assessment, prior to the selection of a remedy, in a public meeting as required in section 12 of this rule.

(3) The owner, operator, or permittee shall continue to monitor in accordance with the assessment ground water monitoring program as required in section 10 of this rule.

(e) The selection of the corrective action remedy must be based on the assessment of various corrective measures conducted under subsection (d), including the following:

(1) The owner, operator, or permittee shall:

(A) select a remedy that, at a minimum, meets the standards listed in subdivision (2); and

(B) submit to the commissioner, within sixty (60) days after the public meeting required in section 12 of this rule, a report describing the selected remedy and how the remedy meets the standards of subdivision (2).

(2) The owner, operator, or permittee shall select a remedy that:

(A) will be protective of human health and the environment;

(B) will attain the ground water protection standard as required in section 11 of this rule;

(C) will reduce or eliminate, to the maximum extent

practicable, further releases of those constituents in sections 15 and 16 of this rule (Table 1A, Table 1B, and Table 2), and in section 11(c) of this rule that may pose a threat to human health or the environment;

(D) will comply with standards for waste management as required in subsection (i); and

(E) is chosen after considering input from the public hearing required under section 12 of this rule.

(3) In selecting a remedy that meets the standards of subdivision (2), a report must be submitted that includes the following factors:

(A) The long and short term effectiveness and protection that is offered by the potential remedy, along with an assessment of the remedy's probable outcome, based on the following considerations:

(i) The magnitude of reduction in the existing risks.

(ii) The magnitude of residual risks in terms of likelihood of further releases, due to waste remaining after implementing a remedy.

(iii) The type and degree of long term management required, including monitoring, operation, and maintenance.

(iv) The short term risks that might be posed to the community, workers, or the environment during the implementation of such a remedy. Short term risk assessment shall include potential threats to human health ~~and~~ **or** the environment associated with excavation, transportation, redisposal, or containment of waste or contaminated materials.

(v) The estimated time until corrective measures are completed.

(vi) The potential for exposure of humans and environmental receptors to remaining waste, including the potential threat associated with excavation, transportation, redisposal, or containment of waste or contaminated materials.

(vii) The long term reliability of the engineering and institutional controls.

(viii) The potential need for additional or alternative remedies.

(B) The effectiveness of the remedy in controlling the source and in reducing further releases based on the following considerations:

(i) The extent to which containment practices will reduce further releases.

(ii) The extent to which treatment technologies may be used to reduce further releases.

(C) The ease or difficulty of implementing a potential remedy based on the following considerations:

(i) The technical difficulty of constructing the proposed remedy.

(ii) The expected operational reliability of the proposed remedial technologies.

(iii) The need to coordinate with and obtain necessary approvals and permits from other local or state agencies.

(iv) The availability of necessary equipment and specialists.

(v) The available capacity and location of needed treatment, storage, and disposal facilities.

(D) The capability of the owner, operator, or permittee to manage the technical and economic aspects of the corrective measures.

(E) The degree to which community concerns are addressed by a potential remedy.

(4) The selected remedy report, as described in subdivision (1)(B), must include a schedule for initiating and completing remedial activities. This schedule must be based on the following considerations:

(A) Vertical and horizontal extent, and physical or chemical characteristics of contamination.

(B) Direction of contaminant movement.

(C) Capacity of remedial technologies to achieve compliance with ground water protection standards, as established under section 11 of this rule, and any other remedial objectives.

(D) Availability of treatment or disposal capacity for waste volumes managed during implementation of remedial measures.

(E) Practical considerations of proposing to use currently unavailable technology that may offer significant advantages over readily available technology, in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives.

(F) Potential risks to human health ~~and~~ **or** the environment from exposure to contamination prior to completing remedial measures.

(G) Resource value of the zone of saturation or aquifer, including the following:

(i) Current and future uses.

(ii) Proximity and withdrawal rate of users.

(iii) Ground water quantity and quality.

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

(v) The hydrogeologic characteristics of the MSWLF and surrounding land.

(vi) Ground water removal and treatment costs.

(vii) The cost and availability of alternative water supplies.

(H) Practical capability of the owner, operator, or permittee to achieve the remedy.

(I) Other relevant factors that may be determined by the commissioner.

(5) Selection of a remedy and implementation schedule must be submitted to the commissioner for review and approval.

(6) The commissioner may determine that remediation of a released constituent, listed in either section 16 of this rule (Table 2) or in section 11(c) of this rule, is not necessary if either of the following are demonstrated to the satisfaction of the commissioner:

(A) Remediation is technically impracticable.

(B) Remediation would result in unacceptable cross-media impacts.

(7) If the commissioner determines that an aquifer cannot be remediated, the owner, operator, or permittee shall contain the aquifer to prevent the migration of contaminants.

(8) A determination made by the commissioner under subdivision (6) will not affect the authority of the state to require source control measures or other necessary measures to:

(A) eliminate or minimize further releases to the ground water;

(B) prevent exposure to the ground water; or

(C) remediate ground water quality to technically achievable concentrations and significantly reduce threats to human health or the environment.

(f) Based on the schedule established under subsection (e)(4) and approved by the commissioner under subsection (e)(5), the owner, operator, or permittee shall do the following:

(1) Establish and implement a corrective action ground water monitoring program that:

(A) at a minimum, meets the requirements of an assessment monitoring program under section 10 of this rule;

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with the ground water protection standard under subsection (j).

(2) Implement the corrective action remedy selected under subsection (e).

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures must, to the greatest extent practicable, be consistent with remedial objectives and, if possible, contribute to the performance of remedial measures. The following factors must be considered in determining whether interim measures are necessary:

(A) Time required to develop and implement a final remedy.

(B) Actual and potential exposure of nearby populations or environmental receptors to regulated constituents.

(C) Actual and potential contamination of potentially useable water supplies or sensitive ecosystems.

(D) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously.

(E) Weather conditions that may cause regulated constituents to migrate or be released.

(F) Potential for:

(i) fire or explosion; or

(ii) exposure to regulated constituents as a result of an accident, a container failure, or a handling system failure.

(G) Other situations that may pose threats to human health ~~and~~ **or** the environment.

(4) Submit a report to the commissioner detailing the progress and performance of the selected remedy. The report must be submitted on a semiannual basis or as determined by the commissioner.

(g) An owner, operator, or permittee or the commissioner may determine, based on information developed after implementation of the remedy has begun or on other information, that compliance under subsection (e)(2) is not being achieved through the remedy selected. In such cases, after approval by the commissioner, the owner, operator, or permittee shall implement other methods or techniques that could practicably achieve compliance with the requirements unless the owner, operator, or permittee makes a determination under subsection (h).

(h) If the owner, operator, or permittee determines that compliance with requirements under subsection (e)(2) cannot be technically achieved with any currently available methods, the owner, operator, or permittee shall:

(1) apply for a commissioner's certification that compliance with requirements under subsection (e)(2) cannot be achieved with any currently available methods;

(2) implement alternate measures to contain contamination, as necessary, to protect human health, the environment and water resources;

(3) implement alternate measures that are technically practicable and consistent with the overall remedial objective to:

(A) control contamination sources; and

(B) remove or decontaminate equipment, units, devices, or structure; and

(4) within fourteen (14) days of determining that compliance cannot be achieved under subsection (g), submit a report to the commissioner that justifies the alternative measures. The report must be approved by the commissioner prior to implementation of any alternative measures.

(i) During a corrective action program, all solid waste managed under a remedy that is required under subsection (e), or under an interim measure that is required under subsection (f)(3), must be managed in a manner that:

(1) is protective of human health and the environment; and

(2) complies with the applicable requirements of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984.

(j) Remedies selected under subsection (e) are considered complete when the owner, operator, or permittee has demonstrated to the satisfaction of the commissioner the following:

(1) Ground water protection standards have been met at all points within the plume of contamination.

(2) For a period of three (3) consecutive years, using statistical procedures and performance standards outlined in section 6 of this rule, the following ground water protection standard, whichever is applicable, has not been exceeded:

(A) The ground water protection standards for the constituents listed in section 16 of this rule (Table 2).

(B) Levels that are twice the concentration of any secondary constituent identified in section 11(c) of this rule.

(3) All corrective actions required to complete the remedy have been satisfied.

(k) The commissioner may, after considering the factors indicated in subsection (l), specify an alternate period during which the following demonstration, whichever is applicable, must be made:

(1) The concentrations of the constituents listed in section 16 of this rule (Table 2) have not exceeded ground water protection standards.

(2) The concentrations of constituents listed in section 11(c) of this rule have not exceeded levels that are twice the ground water protection standard.

(l) The following factors will be considered by the commissioner in specifying an alternative time period:

(1) Vertical and horizontal extent and concentration of the release.

(2) Physical and chemical characteristics of the regulated constituents within the ground water.

(3) Accuracy of the ground water monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy.

(4) Physical and chemical characteristics of the affected ground water.

(5) Physical and chemical characteristics of the affected or potentially affected aquifer system.

(m) Within fourteen (14) days after the completion of all remedial measures, a certification report, signed by the owner, operator, or permittee and a qualified ground water scientist, shall be submitted to the commissioner for written approval. The report must certify that the remedy has been completed in compliance with the requirements of subsection (j).

(n) Upon receipt of the commissioner's written approval of the certification report specified in subsection (m), the owner, operator, or permittee shall be released from the requirements for financial assurance for corrective action specified in 329 IAC 10-39-10.

(o) Corrective action programs that have been initiated under 329 IAC 1.5, which was repealed in 1989, or under 329 IAC 2, which was repealed in 1996, must continue as approved by the commissioner, and the commissioner may incorporate requirements **found** under this rule. *(Solid Waste Management Board; 329 IAC 10-21-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1874; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2808; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3855; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1845, eff Apr 1, 2004)*

SECTION 82. 329 IAC 10-21-15 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-15 Constituents for detection monitoring

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

Sec. 15. (a) The following constituents shall be measured during detection monitoring and be subject to statistical evaluation procedures under section 6 of this rule:

TABLE 1A
Constituents for Detection Monitoring Subject to Statistical Evaluation Procedures

Common Name[1]	CAS RN[2]
~~(1) Ammonia (as N)~~	
~~(2) Benzene~~	~~71-43-2~~
~~(3) Cadmium~~	~~(Dissolved)~~
~~(4) Carbon tetrachloride~~	~~56-23-5~~
~~(5) Chloride~~	
~~(6) Chlorobenzene~~	~~108-90-7~~
~~(7) Chloroethane; Ethyl chloride~~	~~75-00-3~~
~~(8) Chloroform; Trichloromethane~~	~~67-66-3~~
~~(9) Chromium~~	~~(Dissolved)~~
~~(10) Copper~~	~~(Dissolved)~~
~~(11) o-Dichlorobenzene; 1,2-Dichlorobenzene~~	~~95-50-1~~
~~(12) p-Dichlorobenzene; 1,4-Dichlorobenzene~~	~~106-46-7~~
~~(13) 1,1-Dichloroethane; Ethylidene chloride~~	~~75-34-3~~
~~(14) 1,2-Dichloroethane; Ethylene dichloride~~	~~107-06-2~~
~~(15) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride~~	~~75-35-4~~
~~(16) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene~~	~~156-59-2~~
~~(17) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene~~	~~156-60-5~~
~~(18) 1,2-Dichloropropane; Propylene dichloride~~	~~78-87-5~~
~~(19) cis-1,3-Dichloropropene~~	~~10061-01-5~~
~~(20) trans-1,3-Dichloropropene~~	~~10061-02-6~~
~~(21) Ethylbenzene~~	~~100-41-4~~
~~(22) Methyl bromide; Bromomethane~~	~~74-83-9~~
~~(23) Methyl chloride; Chloromethane~~	~~74-87-3~~
~~(24) Methylene chloride; Dichloromethane~~	~~75-09-2~~
~~(25) Styrene~~	~~100-42-5~~
~~(26) Sodium~~	~~(Dissolved)~~
~~(27) Sulfate~~	
~~(28) 1,1,1,2-Tetrachloroethane~~	~~630-20-6~~
~~(29) 1,1,2,2-Tetrachloroethane~~	~~79-34-5~~
~~(30) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene~~	~~127-18-4~~
~~(31) Toluene~~	~~108-88-3~~
~~(32) 1,1,1-Trichloroethane; Methylchloroform~~	~~71-55-6~~
~~(33) 1,1,2-Trichloroethane~~	~~79-00-5~~
~~(34) Trichloroethylene; Trichloroethene~~	~~79-01-6~~
~~(35) Trichlorofluoromethane; CFC-11~~	~~75-69-4~~
~~(36) Vinyl chloride; Chloroethene~~	~~75-01-4~~
~~(37) Xylene (Total)~~	~~See note 3~~
~~(38) Zinc~~	~~(Dissolved)~~
Inorganics:	
(1) Ammonia (as N)	
(2) Cadmium	**(Dissolved)**
(3) Chloride	
(4) Chromium	**(Dissolved)**
(5) Copper	**(Dissolved)**
(6) Sodium	**(Dissolved)**
(7) Sulfate	

Volatile organic compounds:

(8) Benzene 71-43-2
(9) Carbon tetrachloride 56-23-5
(10) Chlorobenzene 108-90-7
(11) Chloroethane; Ethyl chloride 75-00-3
(12) Chloroform; Trichloromethane 67-66-3
(13) o-Dichlorobenzene; 1,2-Dichlorobenzene 95-50-1
(14) p-Dichlorobenzene; 1,4-Dichlorobenzene 106-46-7
(15) 1,1-Dichloroethane; Ethylidene chloride 75-34-3
(16) 1,2-Dichloroethane; Ethylene dichloride 107-06-2
(17) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride 75-35-4
(18) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene . . . 156-59-2
(19) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene 156-60-5
(20) 1,2-Dichloropropane; Propylene dichloride 78-87-5
(21) cis-1,3-Dichloropropene 10061-01-5
(22) trans-1,3-Dichloropropene 10061-02-6
(23) Ethylbenzene 100-41-4
(24) Methyl bromide; Bromomethane 74-83-9
(25) Methyl chloride; Chloromethane 74-87-3
(26) Methylene chloride; Dichloromethane 75-09-2
(27) Styrene 100-42-5
(28) 1,1,1,2-Tetrachloroethane 630-20-6
(29) 1,1,2,2-Tetrachloroethane 79-34-5
(30) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene 127-18-4
(31) Toluene 108-88-3
(32) 1,1,1-Trichloroethane; Methylchloroform 71-55-6
(33) 1,1,2-Trichloroethane 79-00-5
(34) Trichloroethylene; Trichloroethene 79-01-6
(35) Trichlorofluoromethane; CFC-11 75-69-4
(36) Vinyl chloride; Chloroethene 75-01-4
(37) Xylene (Total) . . . . . See note 3

(b) The following constituents shall be measured during detection monitoring but are exempt from statistical evaluation procedures under section 6 of this rule:

TABLE 1B
Constituents for Detection Monitoring Not Subject to Statistical Evaluation Procedures

(1) Field pH . . . . .
(2) Field specific conductance . . . . .
(3) Field Eh (Oxidation-Reduction Potential) . . . . .
(4) Field dissolved oxygen . . . . .
(5) Total solids . . . . .
(6) Total dissolved solids . . . . .
(7) Alkalinity . . . . .
(8) Arsenic . . . . . (Dissolved)
~~(8)~~ **(9)** Bicarbonate . . . . .
~~(9)~~ **(10)** Calcium . . . . . (Dissolved)
~~(10)~~ **(11)** Carbonate . . . . .
~~(11)~~ **(12)** Iron . . . . . (Dissolved)
~~(12)~~ **(13)** Magnesium . . . . . (Dissolved)
~~(13)~~ **(14)** Manganese . . . . . (Dissolved)
~~(14)~~ **(15)** Potassium . . . . . (Dissolved)

Notes:

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2]Chemical Abstracts Service registry number. Where "(Dissolved)" is entered, all species in a filtered sample of the ground water that contain this element are included.

[3]Xylene (total). This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1130-20-7).

(Solid Waste Management Board; 329 IAC 10-21-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1879; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2812; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1849, eff Apr 1, 2004)

SECTION 83. 329 IAC 10-21-16 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-21-16 Constituents for assessment monitoring

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

Sec. 16. **(a)** The ~~following~~ constituents **in this section** shall be subject to assessment monitoring procedures under section 10 of this rule.

~~TABLE 2~~
~~Constituents for Assessment Monitoring~~

~~Common Name[1]~~ ~~CAS RN[2]~~
~~Acenaphthylene . . . . . 208-96-8~~
~~Acenaphthene . . . . . 83-32-9~~
~~Acetone . . . . . 67-64-1~~
~~Acetonitrile; Methyl cyanide . . . . . 75-05-8~~
~~Acetophenone . . . . . 98-86-2~~
~~2-Acetylaminofluorene; 2-AAF . . . . . 53-96-3~~
~~Acrolein . . . . . 107-02-8~~
~~Acrylonitrile . . . . . 107-13-1~~
~~Aldrin . . . . . 309-00-2~~
~~Allyl chloride . . . . . 107-05-1~~
~~4-Aminobiphenyl . . . . . 92-67-1~~
~~Anthracene . . . . . 120-12-7~~
~~Antimony . . . . . (Total)~~
~~Antimony . . . . . (Dissolved)~~
~~Arsenic . . . . . (Total)~~
~~Arsenic . . . . . (Dissolved)~~
~~Barium . . . . . (Total)~~
~~Barium . . . . . (Dissolved)~~
~~Benzene . . . . . 71-43-2~~
~~Benzo[a]anthracene;Benzanthracene . . . . . 56-55-3~~
~~Benzo[b]fluoranthene . . . . . 205-99-2~~
~~Benzo[k]fluoranthene . . . . . 207-08-9~~
~~Benzo[ghi]perylene . . . . . 191-24-2~~
~~Benzo[a]pyrene . . . . . 50-32-8~~
~~Benzyl alcohol . . . . . 100-51-6~~
~~Beryllium . . . . . (Total)~~
~~Beryllium . . . . . (Dissolved)~~
~~alpha-BHC . . . . . 319-84-6~~
~~beta-BHC . . . . . 319-85-7~~
~~delta-BHC . . . . . 319-86-8~~
~~gamma-BHC; Lindane . . . . . 58-89-9~~
~~Bis(2-chloroethoxy) methane . . . . . 111-91-1~~
~~Bis(2-chloroethyl) ether; Dichloroethyl ether . . . . . 111-44-4~~
~~Bis(2-chloro-1-methylethyl) ether; 2,2-Dichlorodiisopropyl ether; DCIP (See note 3) . . . . . 108-60-1~~
~~Bis(2-ethylhexyl) phthalate . . . . . 117-81-7~~
~~Bromochloromethane; Chlorobromomethane . . . . . 74-97-5~~

Bromodichloromethane; Dichlorobromomethane	75-27-4
Bromoform; Tribromomethane	75-25-2
4-Bromophenyl phenyl ether	101-55-3
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
Cadmium	(Total)
Cadmium	(Dissolved)
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlordane	See note 4
p-Chloroaniline	106-47-8
Chlorobenzene	108-90-7
Chlorobenzilate	510-15-6
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
Chloroethane; Ethyl chloride	75-00-3
Chloroform; Trichloromethane	67-66-3
2-Chloronaphthalene	91-58-7
2-Chlorophenol	95-57-8
4-Chlorophenyl phenyl ether	7005-72-3
Chloroprene	126-99-8
Chromium	(Total)
Chromium	(Dissolved)
Chrysene	218-01-9
Cobalt	(Total)
Cobalt	(Dissolved)
Copper	(Total)
Copper	(Dissolved)
m-Cresol; 3-Methylphenol	108-39-4
o-Cresol; 2-Methylphenol	95-48-7
p-Cresol; 4-Methylphenol	106-44-5
Cyanide	57-12-5
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7
4,4'-DDD	72-54-8
4,4'-DDE	72-55-9
4,4'-DDT	50-29-3
Diallate	2303-16-4
Dibenz[a,h]anthracene	53-70-3
Dibenzofuran	132-64-9
Dibromochloromethane; Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane; DBCP	96-12-8
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
Di-n-butyl phthalate	84-74-2
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
3,3'-Dichlorobenzidine	91-94-1
trans-1,4-Dichloro-2-butene	110-57-6
Dichlorodifluoromethane; CFC 12	75-71-8
1,1-Dichloroethane; Ethylidene chloride	75-34-3
1,2-Dichloroethane; Ethylene dichloride	107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
2,4-Dichlorophenol	120-83-2
2,6-Dichlorophenol	87-65-0
1,2-Dichloropropane; Propylene dichloride	78-87-5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9
2,2-Dichloropropane; Isopropylidene chloride	594-20-7
1,1-Dichloropropene	563-58-6
cis-1,3-Dichloropropene	10061-01-5
trans-1,3-Dichloropropene	10061-02-6
Dieldrin	60-57-1
Diethyl phthalate	84-66-2
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2
Dimethoate	60-51-5
p-(Dimethylamino)azobenzene	60-11-7
7,12-Dimethylbenz[a]anthracene	57-97-6
3,3'-Dimethylbenzidine	119-93-7
2,4-Dimethylphenol; m-Xylenol	105-67-9
Dimethyl phthalate	131-11-3
m-Dinitrobenzene	99-65-0
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1
2,4-Dinitrophenol	51-28-5
2,4-Dinitrotoluene	121-14-2
2,6-Dinitrotoluene	606-20-2
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7
Di-n-octyl phthalate	117-84-0
Diphenylamine	122-39-4
Disulfoton	298-04-4
Endosulfan I	959-98-8
Endosulfan II	33213-65-9
Endosulfan sulfate	1031-07-8
Endrin	72-20-8
Endrin aldehyde	7421-93-4
Ethylbenzene	100-41-4
Ethyl methacrylate	97-63-2
Ethyl methanesulfonate	62-50-0
Famphur	52-85-7
Fluoranthene	206-44-0
Fluorene	86-73-7
Fluoride	
Heptachlor	76-44-8
Heptachlor epoxide	1024-57-3
Hexachlorobenzene	118-74-1
Hexachlorobutadiene	87-68-3
Hexachlorocyclopentadiene	77-47-4
Hexachloroethane	67-72-1
Hexachloropropene	1888-71-7
2-Hexanone; methyl butyl ketone	591-78-6
Indeno(1,2,3-cd)pyrene	193-39-5
Isobutyl alcohol	78-83-1
Isodrin	465-73-6
Isophorone	78-59-1
Isosafrole	120-58-1
Kepone	143-50-0
Lead	(Total)
Lead	(Dissolved)
Lithium	(Total)
Lithium	(Dissolved)
Mercury	(Total)
Mercury	(Dissolved)
Methacrylonitrile	126-98-7
Methapyrilene	91-80-5
Methoxychlor	72-43-5
Methyl bromide; Bromomethane	74-83-9
Methyl chloride; Chloromethane	74-87-3
3-Methylcholanthrene	56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
Methyl iodide; Iodomethane	74-88-4
Methyl methacrylate	80-62-6
Methyl methanesulfonate	66-27-3
2-Methylnaphthalene	91-57-6
Methyl parathion; Parathion methyl	298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1

~~Methylene bromide; Dibromomethane~~ ..... ~~74-95-3~~
~~Methylene chloride; Dichloromethane~~ ..... ~~75-09-2~~
~~Naphthalene~~ ..... ~~91-20-3~~
~~1,4-Naphthoquinone~~ ..... ~~130-15-4~~
~~1-Naphthylamine~~ ..... ~~134-32-7~~
~~2-Naphthylamine~~ ..... ~~91-59-8~~
~~Nickel~~ ..... ~~(Total)~~
~~Nickel~~ ..... ~~(Dissolved)~~
~~Nitrate (as N)~~ .....
~~o-Nitroaniline; 2-Nitroaniline~~ ..... ~~88-74-4~~
~~m-Nitroaniline; 3-Nitroaniline~~ ..... ~~99-09-2~~
~~p-Nitroaniline; 4-Nitroaniline~~ ..... ~~100-01-6~~
~~Nitrobenzene~~ ..... ~~98-95-3~~
~~o-Nitrophenol; 2-Nitrophenol~~ ..... ~~88-75-5~~
~~p-Nitrophenol; 4-Nitrophenol~~ ..... ~~100-02-7~~
~~N-Nitroso-di-n-butylamine~~ ..... ~~924-16-3~~
~~N-Nitrosodiethylamine~~ ..... ~~55-18-5~~
~~N-Nitrosodimethylamine~~ ..... ~~62-75-9~~
~~N-Nitrosodiphenylamine~~ ..... ~~86-30-6~~
~~N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine~~ ..... ~~621-64-7~~
~~N-Nitrosomethylethylamine~~ ..... ~~10595-95-6~~
~~N-Nitrosopiperidine~~ ..... ~~100-75-4~~
~~N-Nitrosopyrrolidine~~ ..... ~~930-55-2~~
~~5-Nitro-o-toluidine~~ ..... ~~99-55-8~~
~~Parathion~~ ..... ~~56-38-2~~
~~Pentachlorobenzene~~ ..... ~~608-93-5~~
~~Pentachloronitrobenzene~~ ..... ~~82-68-8~~
~~Pentachlorophenol~~ ..... ~~87-86-5~~
~~Phenacetin~~ ..... ~~62-44-2~~
~~Phenanthrene~~ ..... ~~85-01-8~~
~~Phenol~~ ..... ~~108-95-2~~
~~p-Phenylenediamine~~ ..... ~~106-50-3~~
~~Phorate~~ ..... ~~298-02-2~~
~~Polychlorinated biphenyls; PCBs; Aroclors~~ ..... ~~See note 5~~
~~Pronamide~~ ..... ~~23950-58-5~~
~~Propionitrile; Ethyl cyanide~~ ..... ~~107-12-0~~
~~Pyrene~~ ..... ~~129-00-0~~
~~Safrole~~ ..... ~~94-59-7~~
~~Selenium~~ ..... ~~(Total)~~
~~Selenium~~ ..... ~~(Dissolved)~~
~~Silver~~ ..... ~~(Total)~~
~~Silver~~ ..... ~~(Dissolved)~~
~~Silvex; 2,4,5-TP~~ ..... ~~93-72-1~~
~~Styrene~~ ..... ~~100-42-5~~
~~Sulfide~~ ..... ~~18496-25-8~~
~~2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid~~ ..... ~~93-76-5~~
~~1,2,4,5-Tetrachlorobenzene~~ ..... ~~95-94-3~~
~~1,1,1,2-Tetrachloroethane~~ ..... ~~630-20-6~~
~~1,1,2,2-Tetrachloroethane~~ ..... ~~79-34-5~~
~~Tetrachloroethylene; Tetrachloroethene; Perchloroethylene~~ ~~127-18-4~~
~~2,3,4,6-Tetrachlorophenol~~ ..... ~~58-90-2~~
~~Thallium~~ ..... ~~(Total)~~
~~Thallium~~ ..... ~~(Dissolved)~~
~~Tin~~ ..... ~~(Total)~~
~~Tin~~ ..... ~~(Dissolved)~~
~~Toluene~~ ..... ~~108-88-3~~
~~o-Toluidine~~ ..... ~~95-53-4~~
~~Toxaphene~~ ..... ~~See note 6~~
~~1,2,4-Trichlorobenzene~~ ..... ~~120-82-1~~
~~1,1,1-Trichloroethane; Methylchloroform~~ ..... ~~71-55-6~~
~~1,1,2-Trichloroethane~~ ..... ~~79-00-5~~
~~Trichloroethylene; Trichloroethene~~ ..... ~~79-01-6~~
~~Trichlorofluoromethane; CFC-11~~ ..... ~~75-69-4~~
~~2,4,5-Trichlorophenol~~ ..... ~~95-95-4~~
~~2,4,6-Trichlorophenol~~ ..... ~~88-06-2~~
~~1,2,3-Trichloropropane~~ ..... ~~96-18-4~~
~~0,0,0-Triethyl phosphorothioate~~ ..... ~~126-68-1~~
~~sym-Trinitrobenzene~~ ..... ~~99-35-4~~
~~Vanadium~~ ..... ~~(Total)~~
~~Vanadium~~ ..... ~~(Dissolved)~~
~~Vinyl acetate~~ ..... ~~108-05-4~~
~~Vinyl chloride; Chloroethene~~ ..... ~~75-01-4~~
~~Xylene (Total)~~ ..... ~~See note 7~~
~~Zinc~~ ..... ~~(Total)~~
~~Zinc~~ ..... ~~(Dissolved)~~

(b) The following metals (dissolved and total):

TABLE 2

Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Antimony	**(Total)**
(2) Antimony	**(Dissolved)**
(3) Arsenic	**(Total)**
(4) Arsenic	**(Dissolved)**
(5) Barium	**(Total)**
(6) Barium	**(Dissolved)**
(7) Beryllium	**(Total)**
(8) Beryllium	**(Dissolved)**
(9) Cadmium	**(Total)**
(10) Cadmium	**(Dissolved)**
(11) Chromium	**(Total)**
(12) Chromium	**(Dissolved)**
(13) Cobalt	**(Total)**
(14) Cobalt	**(Dissolved)**
(15) Copper	**(Total)**
(16) Copper	**(Dissolved)**
(17) Lead	**(Total)**
(18) Lead	**(Dissolved)**
(19) Lithium	**(Total)**
(20) Lithium	**(Dissolved)**
(21) Mercury	**(Total)**
(22) Mercury	**(Dissolved)**
(23) Nickel	**(Total)**
(24) Nickel	**(Dissolved)**
(25) Selenium	**(Total)**
(26) Selenium	**(Dissolved)**
(27) Silver	**(Total)**
(28) Silver	**(Dissolved)**
(29) Thallium	**(Total)**
(30) Thallium	**(Dissolved)**
(31) Tin	**(Total)**
(32) Tin	**(Dissolved)**
(33) Vanadium	**(Total)**
(34) Vanadium	**(Dissolved)**
(35) Zinc	**(Total)**
(36) Zinc	**(Dissolved)**

(c) The following inorganics:

TABLE 2

Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Cyanide	**57-12-5**
(2) Fluoride	
(3) Nitrate (as N)	
(4) Sulfide	**18496-25-8**

(d) The following volatile organic compounds:

TABLE 2

Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Acetone	67-64-1
(2) Acetonitrile; Methyl cyanide	75-05-8
(3) Acrolein	107-02-8
(4) Acrylonitrile	107-13-1
(5) Allyl chloride	107-05-1
(6) Benzene	71-43-2
(7) Bromochloromethane; Chlorobromomethane	74-97-5
(8) Bromodichloromethane; Dichlorobromomethane	75-27-4
(9) Bromoform; Tribromomethane	75-25-2
(10) Carbon disulfide	75-15-0
(11) Carbon tetrachloride	56-23-5
(12) Chlorobenzene	108-90-7
(13) Chloroethane; Ethyl chloride	75-00-3
(14) Chloroform; Trichloromethane	67-66-3
(15) Chloroprene	126-99-8
(16) Dibromochloromethane; Chlorodibromomethane	124-48-1
(17) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(18) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(19) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(20) m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1
(21) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(22) trans-1,4-Dichloro-2-butene	110-57-6
(23) Dichlorodifluoromethane; CFC 12	75-71-8
(24) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(25) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(26) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(27) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(28) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(29) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(30) 1,3-Dichloropropane; Trimethylene dichloride	142-28-9
(31) 2,2-Dichloropropane; Isopropylidene chloride	594-20-7
(32) 1,1-Dichloropropene	563-58-6
(33) cis-1,3-Dichloropropene	10061-01-5
(34) trans-1,3-Dichloropropene	10061-02-6
(35) Ethylbenzene	100-41-4
(36) 2-Hexanone; methyl butyl ketone	591-78-6
(37) Isobutyl alcohol	78-83-1
(38) Methacrylonitrile	126-98-7
(39) Methyl bromide; Bromomethane	74-83-9
(40) Methyl chloride; Chloromethane	74-87-3
(41) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(42) Methyl iodide; Iodomethane	74-88-4
(43) Methyl methacrylate	80-62-6
(44) Methyl parathion; Parathion methyl	298-00-0
(45) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(46) Methylene bromide; Dibromomethane	74-95-3
(47) Methylene chloride; Dichloromethane	75-09-2
(48) Styrene	100-42-5
(49) 1,1,1,2-Tetrachloroethane	630-20-6
(50) 1,1,2,2-Tetrachloroethane	79-34-5
(51) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(52) Toluene	108-88-3
(53) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(54) 1,1,2-Trichloroethane	79-00-5
(55) Trichloroethylene; Trichloroethene	79-01-6
(56) Trichlorofluoromethane; CFC-11	75-69-4
(57) 1,2,3-Trichloropropane	96-18-4
(58) Vinyl acetate	108-05-4
(59) Vinyl chloride; Chloroethene	75-01-4
(60) Xylene (Total)	See note 3

(e) The following semivolatile organic compounds:

TABLE 2

Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Acenaphthylene	208-96-8
(2) Acenaphthene	83-32-9
(3) Acetophenone	98-86-2
(4) 2-Acetylaminofluorene; 2-AAF	53-96-3
(5) 4-Aminobiphenyl	92-67-1
(6) Anthracene	120-12-7
(7) Benzo[a]anthracene;Benzanthracene	56-55-3
(8) Benzo[b]fluoranthene	205-99-2
(9) Benzo[k]fluoranthene	207-08-9
(10) Benzo[ghi]perylene	191-24-2
(11) Benzo[a]pyrene	50-32-8
(12) Benzyl alcohol	100-51-6
(13) Bis(2-chloroethoxy) methane	111-91-1
(14) Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4
(15) Bis(2-chloro-1-methylethyl) ether; 2,2-Dichlorodiisopropyl ether; DCIP (See note 4)	108-60-1
(16) Bis(2-ethylhexyl) phthalate	117-81-7
(17) 4-Bromophenyl phenyl ether	101-55-3
(18) Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
(19) p-Chloroaniline	106-47-8
(20) Chlorobenzilate	510-15-6
(21) p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
(22) 2-Chloronaphthalene	91-58-7
(23) 2-Chlorophenol	95-57-8
(24) 4-Chlorophenyl phenyl ether	7005-72-3
(25) Chrysene	218-01-9
(26) m-Cresol; 3-Methylphenol	108-39-4
(27) o-Cresol; 2-Methylphenol	95-48-7
(28) p-Cresol; 4-Methylphenol	106-44-5
(29) Diallate	2303-16-4
(30) Dibenz[a,h]anthracene	53-70-3
(31) Dibenzofuran	132-64-9
(32) Di-n-butyl phthalate	84-74-2
(33) 3,3'-Dichlorobenzidine	91-94-1
(34) 2,4-Dichlorophenol	120-83-2
(35) 2,6-Dichlorophenol	87-65-0
(36) Diethyl phthalate	84-66-2
(37) p-(Dimethylamino)azobenzene	60-11-7
(38) 7,12-Dimethylbenz[a]anthracene	57-97-6
(39) 3,3'-Dimethylbenzidine	119-93-7
(40) 2,4-Dimethylphenol; m-Xylenol	105-67-9
(41) Dimethyl phthalate	131-11-3
(42) m-Dinitrobenzene	99-65-0
(43) 4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1
(44) 2,4-Dinitrophenol	51-28-5
(45) 2,4-Dinitrotoluene	121-14-2
(46) 2,6-Dinitrotoluene	606-20-2
(47) Di-n-octyl phthalate	117-84-0
(48) Diphenylamine	122-39-4
(49) Ethyl methacrylate	97-63-2
(50) Famphur	52-85-7

(51) Fluoranthene 206-44-0
(52) Fluorene 86-73-7
(53) Hexachlorobenzene 118-74-1
(54) Hexachlorobutadiene 87-68-3
(55) Hexachlorocyclopentadiene 77-47-4
(56) Hexachloroethane 67-72-1
(57) Hexachloropropene 1888-71-7
(58) Indeno(1,2,3-cd)pyrene 193-39-5
(59) Isodrin 465-73-6
(60) Isophorone 78-59-1
(61) Isosafrole 120-58-1
(62) Kepone 143-50-0
(63) Methapyrilene 91-80-5
(64) 3-Methylcholanthrene 56-49-5
(65) Methyl methanesulfonate 66-27-3
(66) 2-Methylnaphthalene 91-57-6
(67) Naphthalene 91-20-3
(68) 1,4-Naphthoquinone 130-15-4
(69) 1-Naphthylamine 134-32-7
(70) 2-Naphthylamine 91-59-8
(71) o-Nitroaniline; 2-Nitroaniline 88-74-4
(72) m-Nitroaniline; 3-Nitroaniline 99-09-2
(73) p-Nitroaniline; 4-Nitroaniline 100-01-6
(74) Nitrobenzene 98-95-3
(75) o-Nitrophenol; 2-Nitrophenol 88-75-5
(76) p-Nitrophenol; 4-Nitrophenol 100-02-7
(77) N-Nitroso-di-n-butylamine 924-16-3
(78) N-Nitrosodiethylamine 55-18-5
(79) N-Nitrosodimethylamine 62-75-9
(80) N-Nitrosodiphenylamine 86-30-6
(81) N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine 621-64-7
(82) N-Nitrosomethylethylamine 10595-95-6
(83) N-Nitrosopiperidine 100-75-4
(84) N-Nitrosopyrrolidine 930-55-2
(85) 5-Nitro-o-toluidine 99-55-8
(86) Pentachlorobenzene 608-93-5
(87) Pentachloronitrobenzene 82-68-8
(88) Pentachlorophenol 87-86-5
(89) Phenacetin 62-44-2
(90) Phenanthrene 85-01-8
(91) Phenol 108-95-2
(92) p-Phenylenediamine 106-50-3
(93) Pronamide 23950-58-5
(94) Propionitrile; Ethyl cyanide 107-12-0
(95) Pyrene 129-00-0
(96) Safrole 94-59-7
(97) 1,2,4,5-Tetrachlorobenzene 95-94-3
(98) 2,3,4,6-Tetrachlorophenol 58-90-2
(99) o-Toluidine 95-53-4
(100) 1,2,4-Trichlorobenzene 120-82-1
(101) 2,4,5-Trichlorophenol 95-95-4
(102) 2,4,6-Trichlorophenol 88-06-2
(103) 0,0,0-Triethyl phosphorothioate 126-68-1
(104) sym-Trinitrobenzene 99-35-4

(f) The following pesticides, herbicides, and PCBs:

TABLE 2

Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Aldrin	**309-00-2**
(2) alpha-BHC	**319-84-6**
(3) beta-BHC	**319-85-7**
(4) delta-BHC	**319-86-8**
(5) gamma-BHC; Lindane	**58-89-9**
(6) Chlordane	**See note 5**
(7) 2,4-D; 2,4-Dichlorophenoxyacetic acid	**94-75-7**
(8) 4,4'-DDD	**72-54-8**
(9) 4,4'-DDE	**72-55-9**
(10) 4,4'-DDT	**50-29-3**
(11) Dieldrin	**60-57-1**
(12) 0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	**297-97-2**
(13) Dimethoate	**60-51-5**
(14) Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	**88-85-7**
(15) Disulfoton	**298-04-4**
(16) Endosulfan I	**959-98-8**
(17) Endosulfan II	**33213-65-9**
(18) Endosulfan sulfate	**1031-07-8**
(19) Endrin	**72-20-8**
(20) Endrin aldehyde	**7421-93-4**
(21) Ethyl methanesulfonate	**62-50-0**
(22) Heptachlor	**76-44-8**
(23) Heptachlor epoxide	**1024-57-3**
(24) Methoxychlor	**72-43-5**
(25) Parathion	**56-38-2**
(26) Phorate	**298-02-2**
(27) Polychlorinated biphenyls; PCBs; Aroclors	**See note 6**
(28) Silvex; 2,4,5-TP	**93-72-1**
(29) 2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	**93-76-5**
(30) Toxaphene	**See note 7**

Notes:

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2]Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included. Where "Dissolved" is entered, all species in a filtered sample of the ground water that contain this element are included.

[3]**Xylene (total). This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).**

~~[3]~~ [4]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

~~[4]~~ [5]Chlordane. This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

~~[5]~~ [6]Polychlorinated biphenyls (CAS RN 1336-36-3). This category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5).

~~[6]~~ [7]Toxaphene. This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), that is, chlorinated camphene.

~~[7]Xylene (total). This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).~~

(Solid Waste Management Board; 329 IAC 10-21-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1880; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1850, eff Apr 1, 2004)

SECTION 84. 329 IAC 10-21-17 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-21-17 Additional constituents for assessment monitoring

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

Sec. 17. The following additional constituents shall be subject to assessment monitoring procedures under section 10 of this rule:

TABLE 3
Additional Constituents for Assessment Monitoring

Common Name[1]	CAS RN[2]
(1) Asbestos	132207-33-1
(2) Combined beta/photon emitters	
(3) Gross alpha particle activity (including radium 226, but excluding radon and uranium)	
(4) Radium 226 and 228 (combined)	7440-14-4
(5) Alachlor	15972-60-8
(6) Atrazine	1912-24-9
(7) Carbofuran	1563-66-2
(8) Dalapon	75-99-0
(9) Di(2-ethylhexyl)adipate; DOA	103-23-1
(10) Diquat	231-36-7
(11) Endothall	145-73-3
(12) Glyphosate	1071-83-6
(13) Oxamyl	23135-22-0
(14) Picloram	1918-02-1
(15) Simazine	122-34-9
(16) 2, 3,7, 8 -TCDD (Dioxin)	1746-01-6

Notes:
[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
[2]Chemical Abstracts Service registry number.

(Solid Waste Management Board; 329 IAC 10-21-17; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1855, eff Apr 1, 2004)

SECTION 85. 329 IAC 10-22-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-2 Closure plan

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

Sec. 2. (a) The owner, operator, or permittee of an MSWLF shall prepare a written closure plan. The plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan becomes a condition of the permit upon approval.

(b) The owner, operator, or permittee of ~~MSWLFs~~ **an MSWLF** permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, that:

(1) closed on or before January 1, 1998, must close under the MSWLF's existing approved closure plans; or

(2) intend to close after January 1, 1998, must:

(A) revise closure plans to meet the requirements of subsection (c); and

(B) submit the revised plans to the commissioner for approval within six (6) months after ~~the effective date of this article~~ **April 13, 1996,** or the anniversary date of the approved closure plans, whichever is earlier.

(c) The closure plan must identify the steps necessary to completely close the MSWLF at any point during its active life in accordance with section 1 of this rule. The plan must be certified by a registered professional engineer. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the MSWLF in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the MSWLF.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include the following:

(A) The total time required to close the MSWLF.

(B) The time required for completion of intervening closure activities.

(4) An estimate of the maximum inventory of wastes that will be on-site over the active life of the MSWLF.

(5) An estimate of the cost per acre of providing final cover and vegetation. Such cost must reflect cost necessary to close the MSWLF by the third party as required by the approved plan, but must not be less than:

(A) ~~twenty~~ **twenty-one** thousand dollars ~~($20,000)~~ **($21,000)** per acre to close MSWLF units that are constructed with only a soil liner; and

(B) ~~seventy-five~~ **seventy-eight** thousand **seven hundred fifty** dollars ~~($75,000)~~ **($78,750)** per acre for MSWLF units that are constructed with a composite bottom liner system.

For an application for a new MSWLF or a major modification submitted on or after April 1, 2005, the owner, operator, or permittee must adjust the minimum closure costs provided in clauses (A) and (B) for inflation, as described in 329 IAC 10-39-2(c)(1).

(6) **For new MSWLFs and major modifications,** the closure cost estimate must include a ten percent (10%) contingency cost on the total closure cost of the MSWLF.

(7) If the owner, operator, or permittee of an MSWLF utilizes the **incremental** closure ~~trust fund option or funds the letter of credit on an annual basis,~~ **standard,** as contained in ~~329 IAC 10-39~~ **329 IAC 10-39-2(b)(3)(B),** then for each yearly period following the beginning of operation of the MSWLF, the closure plan must specify the maximum area of the MSWLF into which municipal solid waste will have been deposited through that year of the MSWLF's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivisions (5) and (6).

(8) An estimate of the yearly maintenance costs for a dike or dikes required under 329 IAC 10-16-2.
(9) A construction quality assurance and construction quality control plan for the construction and installation of the final cover system as required by this rule.
(10) A description of the final cover, designed in accordance with this rule, and the methods and procedures to be used to install the cover.
(11) An estimate of the largest area of the MSWLF ever requiring a final cover as required under this rule at any time during the active life.
(12) If property is used to fulfill or reduce the cost of closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:
(A) The closure plan must be updated under this section and submitted to the commissioner.
(B) The closure financial responsibility must be updated under 329 IAC 10-39 and submitted to the commissioner.
(C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) prior to selling, relinquishing, or using the property for any other purpose.

(Solid Waste Management Board; 329 IAC 10-22-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1882; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3859; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1855, eff Apr 1, 2004)

SECTION 86. 329 IAC 10-22-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-3 Partial closure certification
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) The owner, operator, or permittee of an MSWLF may submit partial closure certification for portions of the MSWLF that have received final cover and are graded and have established vegetation in accordance with the applicable provisions of this rule, 329 IAC 10-20, and the approved closure plan prior to closure of the MSWLF.

(b) The owner, operator, or permittee of an MSWLF shall submit to the commissioner a certification signed by the owner, operator, or permittee and an independent registered professional engineer that specifically identifies the closed areas and that specifies that the partial closure has been accomplished in accordance with the approved closure plan and this article. Certification of partial closure must not be made for an area until the final cover has been completely provided for that area and vegetation has been established.

(c) The partial closure certification will be deemed adequate unless, within ~~one hundred fifty (150)~~ **ninety (90)** days of receipt of the partial closure certification, the commissioner issues a notice of deficiency of closure, including action necessary to correct the deficiency.

(d) A partial closure for leachate generation rate, as specified in 329 IAC 10-23-3(c)(5)(B), may be granted if the owner, operator, or permittee of an MSWLF provides actual leachate generation rate data of an area for at least a two (2) year duration after final cover is installed and certified.

(e) Fifteen (15) days prior to initiation of partial closure of a certain area, the owner, operator, or permittee of an MSWLF shall notify the commissioner in writing that they will be constructing a final cover. *(Solid Waste Management Board; 329 IAC 10-22-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3860; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1856, eff Apr 1, 2004)*

SECTION 87. 329 IAC 10-22-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-5 Completion of closure and final cover
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 5. (a) The owner, operator, or permittee of an MSWLF shall complete closure activities and complete application of final cover within one hundred eighty (180) days on ~~an~~ **any** area in the MSWLF **as approved in the closure plan** that:
(1) has received the area's final waste volume; or
(2) is filled to the area's final approved waste elevation.

(b) Upon application for an extension by the owner, operator, or permittee, a one (1) time extension of the closure period may be granted by the commissioner if the owner, operator, or permittee demonstrates that closure will, by necessity, take longer than one hundred eighty (180) days and the owner, operator, or permittee has taken and will continue to take all steps to prevent threats to human health ~~and~~ **or** the environment. The extension of the closure period must not be longer than three hundred sixty-five (365) days immediately following the one hundred eighty (180) days of the original closure period. *(Solid Waste Management Board; 329 IAC 10-22-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3860; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1856, eff Apr 1, 2004)*

SECTION 88. 329 IAC 10-22-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-6 Final cover requirements for new MSWLF units or existing MSWLF units that have a composite bottom liner and a leachate collection system
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) The owner, operator, or permittee of an MSWLF containing new MSWLF units or existing MSWLF units that have a composite bottom liner system and a leachate collection system shall install a final cover system as defined in subsection (b) within one hundred eighty (180) days on any area in the MSWLF units **as approved in the closure plan** that:

(1) has received the final waste volume; or

(2) is filled to the approved final waste elevation;

or as approved under section 5(b) of this rule.

(b) Final cover systems for new MSWLF units or existing MSWLF units that have a composite bottom liner system must consist of the following, starting from the top of the municipal solid waste mass (waste placement) to the top of the final cover system:

(1) A methane gas venting layer must be installed directly over the waste. This layer must consist of twelve (12) inches of drainage layer material that has a hydraulic conductivity of 1×10^{-3} centimeters per second or more. Geosynthetic material (geotextile, geonet, both, or other material as approved by the commissioner) may be substituted for drainage layer material in the gas venting layer if equivalent or better performance is demonstrated. The owner, operator, or permittee must demonstrate that transmissivity and permitivity provide for the anticipated gas discharge quantity.

(2) A soil barrier layer must be installed over the methane gas venting layer. The soil barrier must consist of a lower component of twelve (12) inches of structural fill and an upper component of twelve (12) inches of compacted earthen material with a hydraulic conductivity of 1×10^{-6} centimeters per second or less. The upper component must be soil of Unified Soil Classification ML, CL, MH, CH, or OH. Other suitable material approved by the commissioner may be used if it provides an adequate level of protection to human health and the environment. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner must be performed to confirm the quality of the final cover.

(3) A minimum thirty (30) mil geomembrane top liner must be installed directly in contact with the upper portion of the soil barrier layer. If the geomembrane is composed of high density polyethylene (HDPE), then it must be at least sixty (60) mil thick. The commissioner may require an increase in the thickness of the geomembrane if it is determined that increased thickness is necessary to prevent failure under stresses caused by construction equipment and waste settlement during the post-closure care period.

(4) A drainage layer must be installed over the geomembrane liner. The drainage layer must consist of twelve (12) inches of material that has a hydraulic conductivity of 1×10^{-3} centimeters per second or more. If geosynthetic materials are used as a drainage layer, the effective transmissivity must be equivalent to twelve (12) inches of drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or more.

(5) A top protective soil layer must overlay the drainage layer. This layer must consist of at least eighteen (18) inches of earthen material. If geosynthetic materials are used as a drainage layer, at a minimum, thirty (30) inches of earthen material must be placed on top of the geosynthetic materials. The protective soil layer material must be designed to not clog the drainage layer.

(6) A vegetative layer must overlay the top protective layer. This layer must consist of at least six (6) inches of earthen material capable of sustaining vegetation. In any case, a total thickness of earthen material over the geomembrane top liner must not be less than thirty-six (36) inches.

(7) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.

(8) The final cover must have a slope no less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees and no greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.

(c) The requirement in subsection (b)(1) may be waived by the commissioner if the following apply:

(1) The MSWLF has a permitted active gas recovery and extraction system in place.

(2) The permitted active gas extraction system at the MSWLF extracts or recovers at least sixty percent (60%) of the total volume of landfill gas produced or generated by the MSWLF.

(Solid Waste Management Board; 329 IAC 10-22-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3861; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1856, eff Apr 1, 2004)

SECTION 89. 329 IAC 10-22-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-7 Final cover requirements for existing MSWLF units constructed without a composite bottom liner

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

Sec. 7. (a) The owner, operator, or permittee of an MSWLF containing existing MSWLF units constructed without a composite bottom liner shall install a final cover system as appropriate to subsection (b) or (c) within one hundred eighty (180) days on any area in the MSWLF units **as approved in the closure plan** that:

(1) has received the final waste volume; or

(2) is filled to the approved final waste elevation;

~~unless otherwise approved by the commissioner~~ or as approved under section 5(b) of this rule.

(b) Unless otherwise approved by the commissioner **based on a final cover system providing equivalent environmental protection,** final cover systems for existing MSWLF units constructed with a soil bottom liner and a leachate collection system that were permitted under 329 IAC 2, which was repealed in 1996, and closing after January 1, 1998, must consist of the following:

(1) On slopes equal to or less than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as follows:

(A) A twenty-four (24) inch barrier layer of soil of the Unified Soil Classification ML, CL, MH, CH, or OH directly over the waste. Other suitable material approved by the commissioner may be used if it provides an adequate level of protection to human health and the environment. The soil must be compacted to achieve a hydraulic conductivity equal to 1×10^{-7} centimeters per second or less. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner or as required by this article must be performed to confirm the quality of the final cover.

(B) A vegetative layer must overlay the top protective layer. This layer must consist of at least six (6) inches of earthen material capable of sustaining vegetation.

(2) On slopes greater than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as follows:

(A) A twenty-four (24) inch barrier layer of soil of the Unified Soil Classification ML, CL, MH, CH, or OH directly over the waste. Other suitable material approved by the commissioner may be used if it provides an adequate level of protection to human health and the environment. The soil must be compacted to achieve a hydraulic conductivity equal to 1×10^{-6} centimeters per second or less. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner or as required by this article must be performed to confirm the quality of the final cover.

(B) A vegetative layer consisting of at least six (6) inches of earthen material capable of sustaining vegetation must overlay the barrier layer.

(C) An increase in the thickness of the layers required in this subdivision may be required by the facility permit or the commissioner.

(3) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.

(4) The final cover must have a slope:

(A) no less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees; and

(B) no greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.

(c) Unless otherwise approved by the commissioner **based on a final cover system providing equivalent environmental protection,** final cover systems for existing MSWLF units constructed without a soil bottom liner or a leachate collection system that were permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, and closing after January 1, 1998, must consist of the following:

(1) On slopes equal to or less than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover not including benches, swales, and drainage features, must be constructed as specified in section 6(b)(1) through 6(b)(7) of this rule.

(2) On slopes greater than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as specified in subsection (b)(2).

(3) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.

(4) The final cover must have a slope:

(A) not less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees; and

(B) not greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.

(Solid Waste Management Board; 329 IAC 10-22-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1884; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3861; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1857, eff Apr 1, 2004)

SECTION 90. 329 IAC 10-22-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-22-8 Final closure certification

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

Sec. 8. (a) Following closure of an MSWLF unit at an MSWLF, the owner, operator, or permittee shall submit to the commissioner a certification signed by the owner, operator, or permittee and an independent registered professional engineer that the partial closure involving an MSWLF unit or final closure of the entire MSWLF has been completed in accordance with the approved closure plan. Certification of closure must not be made for an area until the final cover has been completed and vegetation has been established.

(b) Following final closure of all MSWLF units at an MSWLF, the owner, operator, or permittee shall record with the county land recording authority, a notation on the deed to the MSWLF property, or some other instrument normally examined during title search, and notify the commissioner in writing that the notation has been recorded. The notation on the deed must in perpetuity notify any potential purchaser of the property that the land has been used as a MSWLF. At a minimum, the recording must contain the following:

(1) The general types and location of waste.

(2) The depth of fill.

(3) A plot plan, with surface contours at intervals of two (2) feet, which must indicate:

(A) surface water run-off directions;

(B) surface water diversion structures after completion of the operation; and

(C) final grade contours.

(4) A statement that no construction, installation of **ground water monitoring** wells, pipes, conduits, or septic systems, or any other excavation will be done on the property without approval of the commissioner.

(c) The final closure certification will be deemed adequate unless

within ~~one hundred fifty (150)~~ **ninety (90)** days of receipt of the final closure certification the commissioner issues a notice of deficiency of closure, including action necessary to correct the deficiency. *(Solid Waste Management Board; 329 IAC 10-22-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1885; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2814; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3862; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1858, eff Apr 1, 2004)*

SECTION 91. 329 IAC 10-23-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-23-2 Post-closure duties
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee of an MSWLF has the following duties after closure:

(1) Post-closure activities must be performed in accordance with the approved post-closure plan as specified in section 3 of this rule.

(2) Inspection of the MSWLF at least twice per year with a written report on the condition of the MSWLF to be submitted to the commissioner.

(3) Maintenance of the integrity of the geomembrane cap, if applicable, and the minimum thickness of final cover and vegetation as required by 329 IAC 10-20 and 329 IAC 10-22 or as approved by the commissioner.

(4) Maintenance of the final contours of the MSWLF in accordance with the applicable standards of 329 IAC 10-20 and 329 IAC 10-22 and, at a minimum, to provide that no ponding of water occurs on filled areas.

(5) Control of any vegetation on vehicular access ways to monitoring wells as required by 329 IAC 10-20-2(d).

(6) Control of vegetation at the MSWLF as necessary to enable determination of the need for slope and cover maintenance and leachate outbreak abatement.

(7) Maintenance of access control and benchmarks at the MSWLF.

(8) Maintenance and monitoring of the dike or dikes required under 329 IAC 10-16-2.

(9) If ownership of the land or MSWLF changes at any time during the post-closure period, the new owner must have a written agreement with the past owner which states the new owner will monitor and maintain the dike or dikes required by 329 IAC 10-16-2 during the subsequent post-closure period.

(10) Maintenance and monitoring of leachate collection and treatment systems and methane control systems.

(11) Control of any leachate or gas generated at the MSWLF as required by 329 IAC 10-20.

(12) Erosion and sediment control measures must be instituted to comply with 329 IAC 10-20-12.

(13) An MSWLF that closes:

(A) prior to the effective date required by 40 CFR 258 for the MSWLF units' ground water monitoring, must continue to monitor ground water as required by the rules in force at the time the facility entered into post-closure;

(B) on or after the effective date required by 40 CFR 258 for the MSWLF units' ground water monitoring, must monitor ground water after ~~the effective date of this article,~~ **April 13, 1996,** as required by 329 IAC 10-21; or

(C) under any other article is required to follow the:

(i) post-closure plan as required by the rules in force at the time the MSWLF entered into post-closure; or

(ii) rules in force at the time the MSWLF entered into post-closure if the rules in force do not require a post-closure plan.

(14) In addition to the corrective action program required by the rules under which the facility closed, the commissioner may require performance of corrective action measures within 329 IAC 10-21-13 if the MSWLF:

(A) closed prior to ~~the effective date of this article;~~ **April 13, 1996;**

(B) is monitoring ground water in accordance with the rules in force at the time the MSWLF entered into post-closure; and

(C) finds a corrective action program is applicable under the rules in force at the time the MSWLF entered post-closure.

(b) Post-closure requirements imposed by this section must be followed for a period of thirty (30) years after the following applicable date:

(1) If the final closure certification is deemed adequate, the date the final closure certification is received by the commissioner in accordance with 329 IAC 10-22-8(a).

(2) If the final closure certification is deemed inadequate, the date the commissioner approves any actions necessary to correct items listed in a notice of deficiency of closure certification under 329 IAC 10-22-8(c).

(c) The length of the post-closure care period may be increased by the commissioner if the commissioner determines that the lengthened period is necessary to protect human health and the environment. The standards to determine an increased post-closure care period include, but are not limited to:

(1) stability of final cover;

(2) maintenance problems with an MSWLF certified as closed;

(3) evidence of ground water contamination;

(4) quantity of gas produced and managed; or

(5) reliability of ground water monitoring well system.

(Solid Waste Management Board; 329 IAC 10-23-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1886; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2815; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3863; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1859, eff Apr 1, 2004)

SECTION 92. 329 IAC 10-23-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-23-3 Post-closure plan
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) The owner, operator, or permittee of an MSWLF shall

have a written post-closure plan. The post-closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner. The approved post-closure plan must become a condition of the permit. If the permit expires or is revoked, the post-closure plan remains effective and enforceable during the post-closure period. If the plan is determined to be unacceptable, the commissioner shall identify the items needed to make it complete.

(b) The owner, operator, or permittee of existing MSWLFs shall revise and submit post-closure plans meeting the requirements of this rule within six (6) months after ~~the effective date of this article,~~ **April 13, 1996,** or the anniversary date of the approved post-closure plan, whichever is earlier.

(c) The post-closure plan must identify the activities that will be carried on after closure under section 2 of this rule and must include at least the following:

(1) A description of the planned ground water monitoring activities and the frequency at which they will be performed.

(2) A description of the planned maintenance activities and the frequency at which they will be performed.

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the final cover, liner, or any other component of the containment system, or the function of the monitoring system, unless necessary to comply with this article. The commissioner may approve other disturbances if the owner, operator, or permittee demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(4) The name, address, and telephone number of the owner, operator, or permittee with responsibility for maintaining the site after closure whom the commissioner may contact about the MSWLF during the post-closure period.

(5) A post-closure cost estimate in accordance with 329 IAC 10-39. Post-closure costs must be calculated based on the cost necessary for the work to be performed by a third party for thirty (30) years of the post-closure period and must include the following:

(A) For post-closure maintenance of final cover and vegetation, the amount per acre must be ten percent (10%) of the cost calculated under 329 IAC 10-22-2(c)(5) multiplied by the total acreage of the site permitted for filling.

(B) At a minimum, the amount of funds necessary for leachate treatment and disposal must be based on the following gallons per acre per day over the thirty (30) year post-closure period:

Year	Gallons Per Acre Per Day (GPAD)
1–5	150
6–10	80
11–15	50
16–20	30
21–25	20
26–30	10

The commissioner may increase or decrease this amount of funding if it is determined that, based on a site-specific basis, more or less funds are necessary. **A partial closure for leachate generation rate, based on the rates described in this clause, may be granted if the owner, operator, or permittee of an MSWLF provides actual leachate generation rate data of an area for at least a two (2) years' duration after final cover is installed and certified.**

(C) At a minimum, the amount of funds necessary to provide for post-closure activities must include funds for the following:

(i) Ground water monitoring and well maintenance, **including piezometers when applicable.**

(ii) Methane monitoring and maintenance.

(iii) Maintenance of drainage and erosion control system.

(iv) Maintenance of leachate collection system.

(v) Maintenance of access control.

(vi) Control of vegetation.

(vii) Maintenance of the dike or dikes if required under 329 IAC 10-16-2.

(6) The post-closure cost estimate must include a twenty-five percent (25%) contingency cost based on total post-closure cost.

(7) If the property is used to fulfill or reduce the cost of post-closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:

(A) The post-closure plan must be updated under this section and submitted to the commissioner.

(B) The post-closure financial responsibility must be updated under 329 IAC 10-39 and submitted to the commissioner.

(C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) prior to selling, relinquishing, or using the property for any other purpose.

(d) Proposed changes to the approved post-closure plans may be submitted to the commissioner during the post-closure period. The commissioner shall provide notification that the modification is not acceptable within sixty (60) days of receiving the modification request. If the owner or operator does not receive notification from the commissioner within sixty (60) days, the post-closure plan modifications may be installed in accordance with documentation provided to the commissioner. *(Solid Waste Management Board; 329 IAC 10-23-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1887; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2816; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3864; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1859, eff Apr 1, 2004)*

SECTION 93. 329 IAC 10-23-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-23-4 Post-closure certification
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. When the post-closure care requirements of this rule have been completed, the owner, operator, or permittee shall submit a certification statement signed by the owner, operator, or permittee and an independent registered professional engineer that the post-closure care requirements have been met and the MSWLF has stabilized. The post-closure certification will be deemed adequate, unless within ~~one hundred fifty (150)~~ **ninety (90)** days of receipt of the post-closure certification and subsequent review, the commissioner issues notice of the deficiency of post-closure, including actions necessary to correct the deficiency. *(Solid Waste Management Board; 329 IAC 10-23-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1887; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3865; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1861, eff Apr 1, 2004)*

SECTION 94. 329 IAC 10-24-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-24-4 Hydrogeologic study
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) An application for restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be accompanied by a proposal for the installation of monitoring devices, upgradient and downgradient from the landfill with respect to ground water flow direction. The proposal must consist of a hydrogeologic study that provides the information specified in subsection (b). The commissioner may modify the requirements for the proposal dependent on site characteristics. The proposal must be certified by a registered professional engineer or ~~certified~~ **licensed** professional geologist, either of whom shall have education or professional experience in hydrogeology or hydrology.

(b) The proposal must provide the following information by means of maps, diagrams, and narrative:

(1) Summary of regional and site-specific geologic information obtained from recent or previous soil borings, coal borings, area **ground water monitoring** well logs, and published reports.

(2) Water table and potentiometric surface maps of the proposed site, including ground water flow directions as follows:

(A) Such maps must be prepared from data from cased holes or piezometers capable of measuring hydraulic head at a maximum screen interval of five (5) feet. This limitation on the maximum length of the screened interval must not apply to those piezometers used to determine a water table surface. At least:

(i) three (3) such devices must be necessary for fill areas less than twenty (20) acres;

(ii) four (4) such devices for fill areas between twenty (20) and fifty (50) acres;

(iii) five (5) such devices for fill areas between fifty (50) and ninety (90) acres; and

(iv) six (6) such devices for fill areas greater than ninety (90) acres.

The required devices must be evenly distributed over the site. In addition, vertical hydraulic gradients must be measured, at a minimum, of two (2) separate points at the site. Additional nested piezometers or **ground water monitoring** wells may be required by the commissioner to adequately determine vertical components. When more than one (1) aquifer is present within the specified boring depths required in section 3(1)(C) of this rule, individual water table and potentiometric maps may be required.

(B) Monthly water level measurements over a period of at least six (6) months, along with water table and potentiometric surface maps constructed from each measurement event, must be submitted to the commissioner prior to operation of the facility.

(C) The proposal must discuss the evidence and potential of significant components of vertical ground water flow. If there are significant components of vertical flow, cross-sectional representations of equipotential lines and ground water flow direction must be provided that adequately represent the flow beneath the site.

(3) Identification of aquifers below the proposed site to the depth required by section 3(1)(C) of this rule, including the following information:

(A) Aquifer thickness or thicknesses.

(B) Lithology.

(C) Estimated hydraulic conductivity and effective porosity.

(D) Presence of low permeability units above or below.

(E) Whether the aquifers are confined or unconfined.

In addition, a general identification and description must be provided for aquifers known to exist from the geologic literature and area **ground water monitoring** well logs.

(4) Known or projected information on hydraulic connections of ground water to surface water and hydraulic connections between different aquifers at site.

(5) Information on the current and proposed use of ground water in the area, including any available information on existing quality of ground water in the aquifer or aquifers.

(6) Diagrammatic representation of proposed **ground water** monitoring well design and construction, including any available information on existing quality of ground water in the aquifer or aquifers.

(7) Proposed **ground water monitoring** well locations, including length and elevation of screened intervals.

(c) The commissioner may require that pumping tests or similar hydraulic tests be performed to provide a more accurate determination of aquifer characteristics where necessary to determine the adequacy of site or monitoring system design.

(Solid Waste Management Board; 329 IAC 10-24-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1890; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1861, eff Apr 1, 2004)

SECTION 95. 329 IAC 10-29-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-29-1 Monitoring devices
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) All new restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must have ground water monitoring devices. All existing nonmunicipal solid waste landfills in operation on the effective date of 329 IAC 2, which was repealed in 1996, that do not have ground water monitoring devices must install such devices on or before September 1, 1989.

(b) The number and location of monitoring devices are as follows:

(1) The following for new facilities:

(A) The ground water monitoring system must consist of a sufficient number of monitoring devices, installed at appropriate locations and depths, to yield ground water samples from the aquifer or aquifers that represent the quality of both background water that has not been affected by leachate from a facility and the quality of ground water passing the monitoring boundary of the facility. If the aquifer to be monitored exceeds the depth specified in 329 IAC 10-24-3(1)(C), the commissioner may allow alternative placement of monitoring devices.

(B) The number, spacing, and depths of monitoring devices must be proposed by the applicant in the site-specific geological study required under 329 IAC 10-24.

(C) A minimum of four (4) ground water monitoring devices, one (1) upgradient and three (3) downgradient, must be installed.

(2) For existing facilities under subsection (a), as follows:

(A) A minimum of four (4) ground water monitoring devices, one (1) upgradient and three (3) downgradient, must be installed at facilities that do not have an existing ground water monitoring system that meets the requirements of the commissioner.

(B) Locations and installation of monitoring devices must be in accordance with a plan submitted to and approved by the commissioner.

(c) The commissioner may request notification in advance of the date and time of the installation of the monitoring devices.

(d) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall prepare and submit to the commissioner at least annually a ground water flow map or maps as necessary to indicate seasonal ground water. If data acquired during operation of the facility indicates that ground water flow directions are other than as anticipated in the ground water monitoring system design, the commissioner may require additional **ground water** monitoring wells at the facility.

(e) If for any reason a **ground water** monitoring well or other monitoring device is destroyed or otherwise fails to properly function, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall notify the commissioner within ten (10) days of discovery. The device must be repaired if possible. If the device cannot be repaired, it must be properly abandoned and replaced within sixty (60) days of the notification unless the owner or operator is notified otherwise in writing by the commissioner.

(f) As used in this rule, "monitoring devices" includes the following:

(1) Ground water monitoring wells.
(2) Suction lysimeters.
(3) Moisture probes.
(4) Similar monitoring devices.

(g) As used in this rule, "monitoring boundary of the facility" means the vertical plane provided by the monitoring devices hydraulically downgradient from the facility. The downgradient monitoring devices that constitute the monitoring boundary of the facility must be located within fifty (50) feet of the solid waste boundary or the property line, whichever is closer to the solid waste boundary, except where fifty (50) feet is not possible because of site topography or geology. In the case of existing facilities that have ground water monitoring devices approved by the commissioner prior to ~~the effective date of this article,~~ **April 13, 1996,** those approved devices must define the monitoring boundary of the facility. *(Solid Waste Management Board; 329 IAC 10-29-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1900; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1862, eff Apr 1, 2004)*

SECTION 96. 329 IAC 10-30-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-30-4 Closure plan
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall have a written closure plan. The closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan will become a condition of the permit.

(b) The closure plan must identify the steps necessary to completely close the restricted waste site Type I or Type II or

nonmunicipal solid waste landfill at any point during its intended life in accordance with section 1 of this rule. The plan must be certified by a registered professional engineer. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the facility in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the facility.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include:

(A) the total time required to close the facility; and

(B) the time required for completion of intervening closure activities.

(4) An estimate of the cost per acre of providing final cover and vegetation. Such cost must be that which is necessary for providing the following, but must not be less than five thousand dollars ($5,000) per acre:

(A) Two (2) feet of compacted clay soil.

(B) Six (6) inches of topsoil.

(C) Vegetation.

(D) Certification of closure, including any testing necessary for such certification.

(5) The closure plan must separately identify any closure costs for items other than providing final cover and vegetation.

(6) The closure plan must list a closure cost estimate equal to the costs specified by subdivision (5) plus the product of the total area of the site permitted for filling and the cost per unit area specified by subdivision (4). Closure costs must be calculated based on the cost necessary for the work to be performed by a third party.

(7) The estimate of the cost per acre of providing final cover and vegetation must be that necessary for providing the activities as specified in the closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars ($15,000) per acre or fraction of an acre covered by the permitted facility.

(8) If the restricted waste site Type I or Type II or nonmunicipal solid waste landfill utilizes the **incremental** closure ~~trust fund option or funds the letter of credit on an annual basis,~~ **standard,** as contained in ~~329 IAC 10-39-2,~~ **329 IAC 10-39-2(b)(3)(B),** then for each yearly period following the beginning of operation of the facility, the plan must specify the maximum area of the facility into which solid waste will have been deposited through that year of the facility's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivision (5), plus the product of the noted maximum areas of the site and the cost per unit area specified by subdivision (4).

(Solid Waste Management Board; 329 IAC 10-30-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1906; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1862, eff Apr 1, 2004)

SECTION 97. 329 IAC 10-37-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-37-4 Closure plan

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

Sec. 4. (a) Owners or operators of a restricted waste site Type III and a construction/demolition site shall have a written closure plan. The closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan will become a condition of the permit.

(b) The closure plan, certified by a registered professional engineer, must identify the steps necessary to completely close the restricted waste site Type III or construction/demolition site at any point during its intended life in accordance with section 1 of this rule. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the facility in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the facility.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include:

(A) the total time required to close the facility; and

(B) the time required for completion of intervening closure activities.

(4) An estimate of the cost per acre of providing final cover and vegetation. Such cost must be that which is necessary for providing the following, but must not be less than five thousand dollars ($5,000) per acre:

(A) Two (2) feet of compacted clay soil.

(B) Six (6) inches of topsoil.

(C) Vegetation.

(D) Certification of closure, including any testing necessary for such certification.

(5) The closure plan must separately identify any closure costs for items other than providing final cover and vegetation.

(6) The closure plan must list a closure cost estimate equal to the costs specified by subdivision (5) plus the product of the total area of the site permitted for filling and the cost per unit area specified by subdivision (4). Closure costs must be calculated based on the cost necessary for the work to be performed by a third party.

(7) The estimate of the cost per acre of providing final cover and vegetation must be that necessary for providing the activities as specified in the closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars ($15,000) per acre or fraction of an acre covered by the permitted facility.

(8) If the restricted waste site Type III or the construction/demolition site utilizes the **incremental** closure ~~trust fund option or funds the letter of credit on an annual basis~~

standard, as contained in ~~329 IAC 10-39,~~ **329 IAC 10-39-2(b)(3)(B)**, then for each yearly period following the beginning of operation of the facility, the plan must specify the maximum area of the facility into which solid waste will have been deposited through that year of the facility's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivision (5), plus the product of the noted maximum areas of the site and the cost per unit area specified by subdivision (4).

(Solid Waste Management Board; 329 IAC 10-37-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1916; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1863, eff Apr 1, 2004)

SECTION 98. 329 IAC 10-39-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-1 Applicability

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

Sec. 1. (a) This rule applies to all solid waste land disposal facilities that:

(1) are required to have a permit by 329 IAC 10-11-1; and

(2) apply for a permit after ~~the promulgation of this rule~~ **April 13, 1996,** or have an operating permit in effect on ~~the effective date of this article.~~ **April 13, 1996.**

(b) The permittee for solid waste land disposal facilities regulated by this rule shall provide financial responsibility for closure and post-closure in accordance with the following:

(1) Closure and post-closure rules, including:

(A) 329 IAC 10-22 and 329 IAC 10-23;

(B) 329 IAC 10-30 and 329 IAC 10-31; or

(C) 329 IAC 10-37 and 329 IAC 10-38.

(2) Sections 2 through 5 of this rule.

(c) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless they have established financial responsibility for post-closure by choosing a financial assurance mechanism under section 3(a) of this rule and by funding the same under section 3(b) of this rule.

(d) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless they have established financial responsibility for closure by choosing a financial assurance mechanism under section 2(a) of this rule and by funding the same under section 2(b) of this rule.

(e) Solid waste land disposal facilities that apply for permits after ~~the promulgation of this rule~~ **April 13, 1996,** must provide financial responsibility as required by ~~329 IAC 10-11-2(b)(12).~~ **329 IAC 10-11-2.5(a)(4).** The documents establishing both the closure and post-closure financial responsibility must be executed by and approved by the commissioner prior to operation of the facility. In addition, the financial assurance mechanism must be funded under sections 2(b) and 3(b) of this rule prior to operation. *(Solid Waste Management Board; 329 IAC 10-39-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004)*

SECTION 99. 329 IAC 10-39-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-2 Closure; financial responsibility

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

Sec. 2. (a) The permittee shall establish financial responsibility for closure of the solid waste land disposal facility. The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee may satisfy the requirements of this section by establishing a trust agreement on forms provided by the commissioner or on such other form as approved by the commissioner.

(B) All trust agreements must contain the following:

(i) Identification of solid waste land disposal facilities and corresponding closure cost estimates covered by the trust agreement.

(ii) The establishment of a trust fund in the amount determined by subsection (b) and guarantee payments from that fund either reimbursing the permittee for commissioner-approved closure work done or making payments to the commissioner for accomplishing required closure work.

(iii) The requirement of annual evaluations of the trust to be submitted to the commissioner.

(iv) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(v) The requirement of the trustee to notify the commissioner, in writing, of the failure of the permittee to make a required payment into the fund.

(vi) The establishment that the trust is irrevocable unless terminated, in writing, with the approval of the permittee, the trustee, and the commissioner.

(vii) A certification that the signatory of the trust agreement for the permittee was duly authorized to bind the permittee.

(viii) A notarization of all signatures by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.

(ix) The establishment that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal and state of Indiana agency.

(x) The requirement of initial payment into the fund be made within thirty (30) days of the commissioner's approval of the trust agreement, and any subsequent payments be made within thirty (30) days of each anniversary of the initial payment.

(2) The surety bond option, including the following:

(A) The permittee may satisfy the requirements of this section by establishing a surety bond on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All surety bonds must contain the following:

(i) The establishment of penal sums in the amount determined by subsection (b).

(ii) Provision that the surety will be liable to fulfill the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so.

(iii) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the permittee and the commissioner at least one hundred twenty (120) days prior to the effective date of the cancellation.

(iv) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.

(C) The permittee shall establish a standby trust fund to be utilized in the event the permittee fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must be established in accordance with the requirements of subdivision (1).

(D) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury **and must be authorized to do business in Indiana.**

(E) The surety will not be liable for deficiencies in the performance of closure by the permittee after the commissioner releases the permittee in accordance with section 6 of this rule.

(3) The letter of credit option, including the following:

(A) The permittee may satisfy the requirements of this section by establishing a letter of credit on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All letters of credit must contain the following:

(i) The establishment of credit in the amount determined by subsection (b).

(ii) Irrevocability.

(iii) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the permittee and the commissioner at least one hundred twenty (120) days prior to the effective date of cancellation.

(iv) Provision that, upon written notice from the commissioner, the institution issuing the letter of credit will state that the permittee's obligations have not been fulfilled, and the institution will deposit funds equal to the amount of the letter of credit into a trust fund to be used to ensure the permittee's closure obligations are fulfilled.

(C) The permittee shall establish a standby trust fund to be utilized in the event the permittee fails to fulfill its closure obligations and the letter of credit is utilized. Such trust funds must be established in accordance with the requirements of subdivision (1).

(D) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal or Indiana agency.

(4) The insurance option, including the following:

(A) The permittee may satisfy the requirements of this section by providing evidence of insurance on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All insurance must include the following requirements:

(i) Be in the amount determined by subsection (b).

(ii) Provide that, upon written notification to the insurer by the commissioner that the permittee has failed to perform final closure, the insurer shall make payments in any amount, not to exceed the amount insured, and to any person authorized by the commissioner.

(iii) Provide that the permittee shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.

(iv) Provide for assignment of the policy to a transferee permittee.

(v) Provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure of the permittee to pay the premium. No policy may be canceled, be terminated, or fail to be renewed unless at least one hundred twenty (120) days prior to such event the commissioner and the permittee are notified by the insurer in writing.

(C) The insurer shall either be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states.

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites.

(B) If a permittee meets the criteria set forth in item (i) and either item (ii) or (iii), the permittee shall be deemed to have established financial responsibility as follows:

(i) Less than fifty percent (50%) of the company's gross revenues are derived from waste management.

(ii) The permittee meets the following four (4) tests:

(AA) Two (2) of the following three (3) ratios are met:

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

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

(cc) A ratio of current assets to current liabilities greater than one and one-half (1.5).

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

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

(DD) Assets in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure costs estimates.

(iii) The permittee meets the following four (4) tests:

(AA) A current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.

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

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

(DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure estimates.

(C) To demonstrate the financial test has been met, the permittee shall submit the following documents to the commissioner:

(i) A form provided by the commissioner, or such other form as approved by the commissioner, signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.

(ii) A copy of an independent certified public accountant's report examining the permittee's financial statements for the latest completed fiscal year.

(iii) A special report from the permittee's independent certified public accountant to the permittee stating:

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

(BB) in connection with that procedure, no matters come to the attention of the certified public accountant that caused the certified public accountant to believe that the specified data should be adjusted.

(D) The permittee shall submit updated clause (C) documents to the commissioner within ninety (90) days after the close of each fiscal year.

(E) If at any time the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the year-end financial data shows that the permittee no longer meets the requirements.

(F) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report examining the permittee's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, they indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within thirty (30) days after notification of the disallowance.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) A local government permittee that satisfies the following requirements may demonstrate financial assurance up to the amount specified in clause (C):

(i) The local government permittee shall meet the following financial component requirements:

(AA) The local government permittee shall satisfy either of the following as applicable:

(aa) If the local government permittee has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the local government permittee shall have a current rating of:

(1) Aaa, Aa, A, or Baa as issued by Moody's; or

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

on all such general obligation bonds.

(bb) The local government permittee shall satisfy the following financial ratios based on the local government permittee's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to five-hundredths (0.05).

(2) A ratio of annual debt service to total expenditures less than or equal to two-tenths (0.20).

(BB) The local government permittee shall prepare the local government permittee's financial statements in conformity with generally accepted accounting principles (GAAP) for governments and have the financial statements audited by an independent certified public accountant or the state board of accounts.

(CC) A local government permittee is not eligible to assure the local government permittee's obligations under this subdivision if any of the following applies to the local government permittee:

(aa) The local government permittee is currently in default on any outstanding general obligation bonds.

(bb) The local government permittee has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(cc) The local government permittee has operated at

a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years.

(dd) The local government permittee receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the state board of accounts auditing its financial statement as required under subitem (BB). The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the qualification insufficient to warrant disallowance of use of the test.

(DD) As used in this subdivision, the following terms apply:

(aa) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government permittee on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations, such as pensions.

(bb) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(cc) "Deficit" means total annual revenues minus total annual expenditures.

(dd) "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

(ee) "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenues from funds managed by the local government permittee on behalf of a specific third party.

(ii) The local government permittee shall meet the following public notice component requirements:

(AA) The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into the local government permittee's next comprehensive annual financial report (CAFR) at the time of the next required local government financial test annual submittal or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the following:

(aa) Nature and source of closure and post-closure care requirements.

(bb) Reported liability at the balance sheet date.

(cc) Estimated total closure and post-closure care cost remaining to be recognized.

(dd) Percentage of landfill capacity used to date.

(ee) Estimated landfill life in years.

(BB) A reference to corrective action costs must be placed in the CAFR not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(CC) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.

(DD) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(iii) The local government permittee shall meet the following record keeping and reporting requirements:

(AA) The local government permittee shall place the following items in the facility's operating record:

(aa) A letter signed by the local government permittee's chief financial officer that completes the following:

(1) Lists all of the current cost estimates covered by a financial test as described in clause (C).

(2) Provides evidence and certifies that the local government permittee meets the conditions of item (i)(AA), (i)(BB), and (i)(CC).

(3) Certifies that the local government permittee meets the conditions of item (ii) and clause (C).

(bb) The local government permittee's independently audited year-end financial statements for the latest fiscal year (except for local government permittees where audits are required every two (2) years when unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who shall be an independent certified public accountant, or the state board of accounts that conducts equivalent comprehensive audits.

(cc) A report to the local government permittee from the local government permittee's independent certified public accountant or the state board of accounts based on performing an agreed upon procedures engagement relative to the:

(1) financial ratios required by item (i)(AA)(bb), if applicable; and

(2) requirements of item (i)(BB), (i)(CC)(cc), and (i)(CC)(dd).

The independent certified public accountant's or state board of accounts' report must state the procedures performed and the findings.

(dd) A copy of the CAFR used to comply with item (ii) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(BB) The items required in subitem (AA) must be placed in the facility operating record as follows:

(aa) In the case of closure and post-closure care, either at the time of the next required local government financial test annual submittal or prior to the initial receipt of waste at the facility, whichever is later.

(bb) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of 329 IAC 10-21-13.

(CC) After the initial placement of the items in the facility's operating record, the local government permittee shall update the information and place the updated information in the operating record within one hundred eighty (180) days following the close of the local government permittee's fiscal year.

(DD) The local government permittee is no longer required to meet the requirements of this item when either of the following occur:

(aa) The local government permittee substitutes alternate financial assurance as specified in this rule.

(bb) The local government permittee is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(EE) A local government permittee shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall, within one hundred twenty (120) days following the close of the local government permittee's fiscal year, complete the following:

(aa) Obtain alternative financial assurance that meets the requirements of this rule.

(bb) Place the required submissions for that assurance in the facility's operating record.

(cc) Notify the commissioner that the local government permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(FF) The commissioner, based on a reasonable belief that the local government permittee may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government permittee at any time. If the commissioner finds, on the basis of such reports or other information, that the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall provide alternate financial assurance in accordance with this rule.

(GG) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the local government permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the local government permittee does not meet the requirements of this subdivision. The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(C) The local government permittee shall complete the calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which a local government permittee can assure under this subdivision is determined as follows:

(i) If the local government permittee does not assure other environmental obligations through a financial test, the local government permittee may assure closure, post-closure, and corrective action costs that equal up to forty-three percent (43%) of the local government permittee's total annual revenue.

(ii) If the local government permittee assures other environmental obligations through a financial test, including those associated with:

(AA) underground injection control (UIC) facilities under 40 CFR 144.62;

(BB) petroleum underground storage tank facilities under 329 IAC 9-8;

(CC) polychlorinated biphenyls (PCB) storage facilities under 40 CFR 761; and

(DD) hazardous waste treatment, storage, and disposal facilities under 329 IAC 3.1-14 or 329 IAC 3.1-15;

the local government permittee shall add those costs to the closure, post-closure, and corrective action costs the local government permittee seeks to assure under this subdivision. The total that may be assured must not exceed forty-three percent (43%) of the local government permittee's total annual revenue.

(iii) The local government permittee shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in this clause.

(7) The local government guarantee option, including the following:

(A) A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required by sections 2, 3, and 10 of this rule, by obtaining a written guarantee provided by a local government.

(B) The guarantor shall meet the requirements of the local government financial test in subdivision (6) and shall comply with the terms of a written guarantee as follows:

(i) The guarantee must be effective:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(ii) The guarantee must provide the following:

(AA) If the permittee fails to perform any combination of closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor shall:

(aa) perform or pay a third party to perform any combination of closure, post-closure care, or corrective action as required under this subitem; or

(bb) establish a fully funded trust fund as specified in subdivision (1) in the name of the permittee.

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

(CC) If a guarantee is canceled under subitem (BB), the permittee shall, within ninety (90) days following receipt of the cancellation notice by the permittee and the commissioner, complete the following:

(aa) Obtain alternate financial assurance under this rule.

(bb) Place evidence of that alternate financial assurance in the facility operating record.

(cc) Notify the commissioner.

(DD) If the permittee fails to provide alternate financial assurance within the ninety (90) day period under subitem (CC), the guarantor shall complete the following:

(aa) Provide alternate assurance within one hundred twenty (120) days following the guarantor's notice of cancellation.

(bb) Place evidence of the alternate assurance in the facility operating record.

(cc) Notify the commissioner.

(C) The permittee shall complete the following record keeping and reporting requirements:

(i) The permittee shall place a certified copy of the guarantee along with the items required under subdivision (6)(B)(iii) into the facility's operating record:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(ii) The permittee is no longer required to maintain the items specified in this clause when:

(AA) the permittee substitutes alternate financial assurance as specified in this rule; or

(BB) the permittee is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(iii) If a local government guarantor no longer meets the requirements of subdivision (6), the permittee shall, within ninety (90) days, complete the following:

(AA) Obtain alternative assurance.

(BB) Place evidence of the alternate assurance in the facility operating record.

(CC) Notify the commissioner.

If the permittee fails to obtain alternate financial assurance within the ninety (90) day period, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) Financial responsibility closure cost estimate requirements must be as follows:

(1) For purposes of establishing financial responsibility, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:

(A) The closure costs derived under:

(i) 329 IAC 10-22-2(c);

(ii) 329 IAC 10-30-4(b); or

(iii) 329 IAC 10-37-4(b).

(B) One (1) of the closure cost estimating standards under subdivision (3).

(2) As used in this section, "establishment of financial responsibility" means submission of financial responsibility to the commissioner in the form of one (1) of the options under subsection (a).

(3) The permittee shall use one (1) of the following closure cost estimating standards:

(A) The entire solid waste land disposal facility closure standard is an amount that equals the estimated total cost of closing the entire solid waste land disposal facility, less an amount representing portions of the solid waste land disposal facility that have been certified for partial closure in accordance with:

(i) 329 IAC 10-22-3;

(ii) 329 IAC 10-30-5; or

(iii) 329 IAC 10-37-5.

(B) The incremental closure standard is an amount which, for any year of operation, equals the total cost of closing the portion of the solid waste land disposal facility dedicated to the current year of solid waste land disposal facility operation, plus all closure amounts from all other partially or completely filled portions of the solid waste land disposal facility from prior years of operation that have not yet been certified for partial closure in accordance with:

(i) 329 IAC 10-22-3;

(ii) 329 IAC 10-30-5; or

(iii) 329 IAC 10-37-5.

(c) Until final closure of the solid waste land disposal facility is certified, the permittee shall annually review and submit to the commissioner the financial closure estimate derived under this section within thirty (30) days after the annual submittal date. The funding must be established or updated within thirty (30) days after the original effective date of the establishment of responsibility for closure. The funding must be updated within thirty (30) days after the annual submittal date. The submittal must also include a copy of the final contour map of the solid waste land disposal facility that delineates the bound-

aries of all areas into which waste has been placed as of the annual review and certified by a registered professional engineer or registered land surveyor. In addition, as part of the annual review, the permittee shall revise the closure estimate as follows:

(1) For inflation, using an inflation factor derived from the annual implicit price deflator for gross national product as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year as follows:

(A) The first revision is made by multiplying the original closure cost estimate by the inflation factor. The result is the revised closure cost estimate.

(B) Subsequent revisions are made by multiplying the latest revised closure cost estimate by the latest inflation factor.

(2) For changes in the closure plan, whenever such changes increase the cost of closure.

(d) The permittee may revise the closure cost estimate downward whenever a change in the closure plan decreases the cost of closure or whenever portions of the solid waste land disposal facility have been certified for partial closure under:

(1) 329 IAC 10-22-3;

(2) 329 IAC 10-30-5; or

(3) 329 IAC 10-37-5.

(Solid Waste Management Board; 329 IAC 10-39-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1919; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2817; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2228; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3866; *errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004)*

SECTION 100. 329 IAC 10-39-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-3 Post-closure; financial responsibility

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

Sec. 3. (a) The permittee shall establish financial responsibility for post-closure care of the solid waste land disposal facility. The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee shall establish a trust agreement on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All trust agreements must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The permittee shall establish a surety bond on forms provided by the commissioner or on such other form as approved by the commissioner.

(B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(3) The letter of credit option, including the following:

(A) The permittee shall establish a letter of credit on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(4) The insurance option, including the following:

(A) The permittee shall provide evidence of insurance on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All insurance must conform to the requirements detailed in section 2(a)(4)(B) through 2(a)(4)(C) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites.

(B) If a permittee meets the criteria set forth in section 2(a)(5)(B) through 2(a)(5)(D) of this rule, the permittee shall be deemed to have established financial responsibility.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If a permittee meets the criteria set forth in section 2(a)(6)(B) through 2(a)(6)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(7) The local government guarantee option. If the local government guarantor and the permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the

permittee shall be deemed to have established financial responsibility.

(b) The permittee shall choose a financial responsibility mechanism that guarantees funds will be available to meet the post-closure requirements of the solid waste land disposal facility, including the following:

(1) Funding must equal the amount determined under:

(A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);

(B) 329 IAC 10-31-3(b)(4); or

(C) 329 IAC 10-38-3(b)(4).

(2) Funding may be accomplished by initially funding the chosen financial responsibility mechanism in an amount equal to the amount determined under:

(A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);

(B) 329 IAC 10-31-3(b)(4); or

(C) 329 IAC 10-38-3(b)(4).

(3) Funding may also be accomplished by making annual payments equal to the amount determined by the formula:

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

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

Annual funding must be no later than thirty (30) days after either each annual anniversary date of the first payment into the mechanism or the establishment of the mechanism, if no payments are required.

(c) The permittee shall submit an annual update **for inflation and for changes in the post-closure plan, which increase the costs of post-closure,** within thirty (30) days after the annual submittal date to the commissioner regarding post-closure financial assurance until final closure certification. *(Solid Waste Management Board; 329 IAC 10-39-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1922; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2235; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3871; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1870, eff Apr 1, 2004)*

SECTION 101. 329 IAC 10-39-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-7 Incapacity of permittee, guarantors, or financial institutions

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

Sec. 7. (a) A permittee shall notify the commissioner by certified mail within ten (10) days after commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., October 1, 1979, naming the permittee as debtor.

(b) A local government guarantor, which provides financial assurance to a permittee, shall notify the permittee and the commissioner by certified mail within ten (10) days after commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., October 1, 1979, naming the local government guarantor as debtor.

(c) A permittee who fulfills the requirements of sections 1 through 5 of this rule by obtaining a trust fund, surety bond, letter of credit, insurance policy, or local government guarantee ~~will~~ **shall** be deemed to be without the required financial responsibility in the event of bankruptcy of the:

(1) trustee;

(2) institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments; or

(3) local government guarantor.

The permittee shall establish other financial responsibility within sixty (60) days after such an event. *(Solid Waste Management Board; 329 IAC 10-39-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1871, eff Apr 1, 2004)*

SECTION 102. 329 IAC 10-39-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-9 Release of funds

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

Sec. 9. (a) This section applies to all permittees funding financial responsibility mechanisms under this rule whether utilizing the entire facility standard (section 2(b)(3)(A) of this rule) or the incremental standard (section 2(b)(3)(B) of this rule).

(b) Permittees may request release of closure or post-closure financial responsibility funds as follows:

(1) Closure as follows:

(A) Prior to closure of the solid waste land disposal facility, if payments have been made by the permittee as a part of establishing a financial responsibility mechanism, and if the payments total more than the required amount, the permittee may request, and the commissioner shall release the excess amount provided no refund must be made for an amount less than two thousand five hundred dollars ($2,500). Such request for release must be made no more than once a year.

(B) After beginning final closure, a permittee or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the commissioner for a minimum of ten thousand dollars ($10,000), **except after final closure certification approval.** However, the permittee must provide maps indicating the closure work that has been completed, and after expenditures for closures have been reimbursed, the remaining amount in the fund must be an adequate amount to complete the remainder of the closure work as required by the closure plan.

(2) Post-closure as follows:

(A) Prior to closure of the solid waste land disposal facility, if payments have been made by the permittee as a part of establishing a financial responsibility mechanism and if the payments total more than the required amount, the permittee may request, and the commissioner shall release the excess amount provided no refund must be made for an amount less than two thousand five hundred dollars ($2,500). Such request for release must be made no more than once a year.

(B) During the period of post-closure care, the commissioner may approve a release of funds by an amount of not less than two thousand five hundred dollars ($2,500) and not more than ~~ten~~ **three** percent ~~(10%)~~ **(3%)** of the current balance of the trust fund, **except after final post-closure certification approval,** if the permittee demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care. Provided, however, that at no time must the value of the trust fund be allowed to drop below the remaining cost of post-closure care. Such requests for release must be made no more than once a year.

(c) Within thirty (30) days after receipt of a request for release of funds under subsection (b), the commissioner shall determine whether the expenditures are justified and, if so, shall instruct the trustee to make reimbursement in such amounts as the commissioner specifies in writing. If the commissioner determines that the cost of the closure or post-closure will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursement of such amounts as deemed prudent until it is determined that the permittee is no longer required to maintain the financial responsibility. *(Solid Waste Management Board; 329 IAC 10-39-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3873; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1871, eff Apr 1, 2004)*

SECTION 103. 329 IAC 10-39-10 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-10 Financial assurance for corrective action for municipal solid waste landfills

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

Sec. 10. (a) The owner, operator, or permittee of each MSWLF required to undertake a corrective action program ~~under 329 IAC 10-21-13~~ **for ground water impacts** shall establish financial assurance for the most recent corrective action program. The owner, operator, or permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a trust fund on forms provided by the commissioner or in such other form as approved by the commissioner.

(B) All trust funds must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a surety bond on forms provided by the commissioner or in such other form as approved by the commissioner.

(B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(3) The letter of credit option, including the following:

(A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a letter of credit on forms provided by the commissioner or in such other form as approved by the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(4) The local government financial test option, including the following:

(A) This financial test is only available for owners, operators, or permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If an owner, operator, or permittee meets the criteria set forth in section 2(a)(6)(B) through 2(a)(6)(C) of this rule, the owner, operator, or permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the owner, operator, or permittee fails to meet the financial test, the owner, operator, or permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the owner, operator, or permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the owner, operator, or permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the owner, operator, or permittee does not meet the requirements of this subdivision. The owner, operator, or permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(5) The local government guarantee option. If the local government guarantor and the owner, operator, or permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of

this rule, the owner, operator, or permittee shall be deemed to have established financial responsibility.

(b) The owner, operator, or permittee of an MSWLF shall choose a financial responsibility mechanism that guarantees funds will be available to meet the corrective action requirements under 329 IAC 10-21-13. The owner, operator, or permittee shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 329 IAC 10-21-13 and shall include the following, as applicable:

(1) Payments into the trust fund must be made annually by the owner, operator, or permittee over half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half (½) of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period. The amount of subsequent payments must be determined by the following formula:

$$\text{NextPayment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

Where: RB = the most recent estimate of the required trust fund balance for corrective action (that is, the total costs that will be incurred during the second half of the corrective action period)

CV = the current value of the trust fund

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

The initial payment into the trust fund must be made no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(2) The surety bond must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(3) The letter of credit must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(4) The local government financial test must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(5) The local government guarantee must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(c) An owner, operator, or permittee of an MSWLF required to undertake a corrective action program ~~under 329 IAC 10-21-13~~ **for ground water impacts** shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under 329 IAC 10-21-13. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner, operator, or permittee shall notify the commissioner that the estimate has been placed in the operating record. The owner, operator, or permittee shall do the following:

(1) Annually adjust the estimate for inflation until the corrective action program is completed in accordance with 329 IAC 10-21-13.

(2) Increase the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if changes in the corrective action program or MSWLF conditions increase the maximum costs of corrective action.

The owner, operator, or permittee may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner, operator, or permittee shall notify the commissioner that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record. *(Solid Waste Management Board; 329 IAC 10-39-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1925; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3874; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1872, eff Apr 1, 2004)*

SECTION 104. THE FOLLOWING ARE REPEALED: 329 IAC 10-2-6; 329 IAC 10-2-29; 329 IAC 10-2-33; 329 IAC 10-2-53; 329 IAC 10-2-60; 329 IAC 10-2-76; 329 IAC 10-2-127; 329 IAC 10-2-128; 329 IAC 10-2-149; 329 IAC 10-2-177; 329 IAC 10-2-203; 329 IAC 10-2-205.

SECTION 105. **SECTIONS 1 through 104 of this document take effect April 1, 2004.**

LSA Document #00-185(F)
Proposed Rule Published: November 1, 2002; 26 IR 430
Hearing Held: October 21, 2003
Approved by Attorney General: January 23, 2004
Approved by Governor: February 6, 2004
Filed with Secretary of State: February 9, 2004, 4:51 p.m.
Incorporated Documents Filed with Secretary of State: Method 9095A, "Paint Filter Liquids Test", U.S. Environmental Protection Agency publication SW-846, previously incorporated by reference in LSA Document #97-220, filed January 9, 1998; 49 U.S.C. Sec. 44718; U.S. Environmental Protection Agency: Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice, Federal Register, Vol. 65, No. 210, October 30, 2000.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #02-235(F)

DIGEST

Amends 329 IAC 3.1-1-7 to incorporate by reference the July 1, 2002, edition of 40 CFR 260 through 40 CFR 270 and 40 CFR 273. Amends 329 IAC 3.1-4-1 to remove a reference to mercury-containing lamps. Amends 329 IAC 3.1-7-2 and 329 IAC 3.1-10-2 to require retention of the annual report required by IC 13-22-4-3.1 for three years. Amends 329 IAC 3.1-9-2 to require retention of the annual report required by IC 13-22-4-3.1 for three years and to delete 40 CFR 264.555(e)(6). Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8, Draft Rule, and Notice of First Public Hearing: September 1, 2002, Indiana Register (25 IR 4222).

Date of First Hearing: November 19, 2002.

Proposed Rule and Notice of Second Public Hearing: January 1, 2003, Indiana Register (26 IR 1239).

Date of Second Hearing: October 21, 2003.

329 IAC 3.1-1-7 **329 IAC 3.1-9-2**
329 IAC 3.1-4-1 **329 IAC 3.1-10-2**
329 IAC 3.1-7-2

SECTION 1. 329 IAC 3.1-1-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4
Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, ~~2001.~~ **2002.** When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11. The following publications are also incorporated by reference:

(1) 40 CFR 146 (1995).

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

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(c) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(d) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions which may be effective in Indiana which are not incorporated in this article or are retained as federal authority. *(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)*

SECTION 2. 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).~~

(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; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)

SECTION 3. 329 IAC 3.1-7-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-7-2 Exceptions and additions; generator standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; IC 13-22-4-3.1; 40 CFR 262

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

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

(2) In addition to the requirements of 40 CFR 262, Subpart B and the appendix to 40 CFR 262, the generator shall enter the EPA hazardous waste number for each waste on the Uniform Hazardous Waste Manifest (EPA Form 8700-22) as follows:

(A) Enter the four (4) digit EPA hazardous waste number from 40 CFR 261 that identifies the waste in item "I" of the manifest form or item "R" of the continuation sheet (EPA Form 8700-22A).

(B) If multiple EPA hazardous waste numbers apply, enter the hazardous waste numbers as follows:

(i) Enter the one (1) EPA hazardous waste number that identifies the most distinctive or most hazardous property of the waste in item "I" of the manifest form or item "R" of the continuation sheet.

(ii) The remaining EPA hazardous waste numbers may be entered in item "J" of the manifest form or item "S" of the continuation sheet.

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

(3) In addition to the requirements of 40 CFR 262.40, a generator shall keep the reports required by IC 13-22-4-3.1 on file for at least three (3) years after submission to the department.

~~(3)~~ **(4)** Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.

~~(4)~~ **(5)** In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".

~~(5)~~ **(6)** Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.

~~(6)~~ **(7)** In 40 CFR 262.53 and 40 CFR 262.54, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.

~~(7)~~ **(8)** Exception reports required from primary exporters pursuant to 40 CFR 262.55 must be filed with the Regional Administrator of the EPA and the commissioner.

~~(8)~~ **(9)** Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.

~~(9)~~ **(10)** In 40 CFR 262.57(b), the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.

(Solid Waste Management Board; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875)

SECTION 4. 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 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-22-4-3.1; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.

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

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

(7) 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 commissioner.

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

(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.".

(8) In addition to the requirements in 40 CFR 264, Subpart E, the reports required by IC 13-22-4-3.1 must be kept on file for at least three (3) years after submission to the department.

~~(8)~~ **(9)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

~~(9)~~ **(10)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

~~(10)~~ **(11)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

~~(11)~~ **(12)** Delete 40 CFR 264.301(l).

~~(12)~~ **(13)** Delete 40 CFR 264, Appendix VI.

~~(13)~~ **(14)** In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(14)~~ **(15)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

(16) Delete 40 CFR 264.555(e)(6).

(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; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875)

SECTION 5. 329 IAC 3.1-10-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-10-2 Exceptions and additions; interim status standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-14-10; IC 13-22-2; IC 13-22-4-3.1; IC 13-30-3; 40 CFR 265

Sec. 2. Exceptions and additions to federal interim status standards are as follows:

(1) In 40 CFR 265.1(a) dealing with scope of the permit, delete "national" and insert "state".

(2) In 40 CFR 265.1(b), delete "section 3005 of RCRA" and insert "329 IAC 3.1-13" in both places where it occurs.

(3) Delete 40 CFR 265.1(c)(4).

(4) In 40 CFR 265.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(5) Reports to the state required at 40 CFR 265.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

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

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

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

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

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

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

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

(11) In addition to the requirements in 40 CFR 265, Subpart E, the reports required by IC 13-22-4-3.1 must be kept on file for at least three (3) years after submission to the department.

~~(11)~~ **(12)** In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date.

~~(12)~~ **(13)** Delete 40 CFR 265.112(d)(3)(ii) and substitute: "Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under IC 13-30-3, or final administrative order under IC 4-21.5 to cease receiving hazardous waste or close".

~~(13)~~ **(14)** Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision (11).

~~(14)~~ **(15)** Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-14.

~~(15)~~ **(16)** In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

~~(16)~~ **(17)** In 40 CFR 265.191(c), delete "July 14, 1986" and insert "June 20, 1988".

~~(17)~~ **(18)** In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in 329 IAC 3.1-9-3(c)(1) through 329 IAC 3.1-9-3(c)(8).

~~(18)~~ **(19)** In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

~~(19)~~ **(20)** In 40 CFR 265.301(d)(2)(i)(C), delete "RCRA Section 3005(c)" and insert "329 IAC 3.1-13".

~~(20)~~ **(21)** In 40 CFR 265.314(g)(2) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

~~(21)~~ **(22)** In 40 CFR 265.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(22)~~ **(23)** In 40 CFR 265.316(f), delete "fiber drums" and substitute "nonmetal containers".

~~(23)~~ **(24)** Delete 40 CFR 265.430(b) and substitute the following: "The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule.".

(Solid Waste Management Board; 329 IAC 3.1-10-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; 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 2434; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3113; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1876)

LSA Document #02-235(F)
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Approved by Governor: January 12, 2004
Filed with Secretary of State: January 14, 2004, 3:20 p.m.
Incorporated Documents Filed with Secretary of State: 40 CFR 146 and 40 CFR 60, Appendix A (revised as of July 1, 1995), previously incorporated by reference in LSA Document #96-25(F), filed July 18, 1996; "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester", ASTM Standard D 3278-78; "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester", ASTM Standard D 93-79 or D 93-80; "ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography", ASTM Standard D 1946-82; "ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)", ASTM Standard D 2382-83; "ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis", ASTM Standard E 169-87; "ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis", ASTM Standard E 168-88; "ASTM Standard Practice for Packed Column Gas Chromatography", ASTM Standard E 260-85; "ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography", ASTM Standard D 2267-88; "APTI Course 415: Control of Gaseous Emissions", EPA Publication EPA-450/2-81-005, December 1981; "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210; Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 (Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998)); "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC; "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals", ASTM Standard E 926-88, Test Method C - Bomb, Acid Digestion Method; API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks"; "ASTM Standard Test Method for Vapor Pressure - Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope", ASTM Standard D 2879-92; Method 1664, Revision A, "n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry", February 1999, EPA-821-R-98-002.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

LSA Document #02-332(F)

DIGEST

Adds 357 IAC 1-11 to establish certification and licensing requirements for all applicators that use any pesticide as part of a mosquito abatement operation conducted on publicly accessible areas and to establish registration requirements for technicians using pesticides under the supervision of the certified and licensed applicators. Effective 30 days after filing with the secretary of state.

357 IAC 1-11

SECTION 1. 357 IAC 1-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Community-Wide Mosquito Abatement Pesticide Applicators and Technicians

357 IAC 1-11-1 Definitions

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4
Affected: IC 15-3-3.6-8.1

Sec. 1. The following definitions apply throughout this rule:

(1) "Category 8" means the public health pest control certification and license category referenced in 355 IAC 4-1-3(14), which includes pesticide applicators who use or supervise the use of pesticides in mosquito abatement operations.

(2) "Commercial applicator license" means the license issued annually by the state chemist to an individual who has met the requirements established in IC 15-3-3.6-8.1, including the following licenses:

(A) Applicator for hire.

(B) Applicator not for hire.

(C) Public applicator.

(3) "Community-wide mosquito abatement" means any pesticide application activities, including mosquito adulticiding and larviciding, conducted wholly or in part on publicly accessible property. The term does not include pesticide applications performed for the control of mosquitoes solely on a single-family residence.

(4) "Direct supervision" means one (1) of the following:

(A) The supervision and oversight procedures for noncertified applicators, as required in 355 IAC 4-2.

(B) The supervising certified applicator is:

(i) present at the pesticide application site in close proximity to and within reasonable line of sight of the noncertified applicator; and

(ii) operating under conditions that permit direct voice contact with the noncertified applicator.

(C) For employees of a governmental agency, the supervising certified applicator:

(i) has provided the noncertified applicator with written instructions covering site-specific precautions to prevent injury to persons or the environment or damage to property at the pesticide application site; and

(ii) is operating under conditions that permit direct voice contact with the noncertified applicator.

(5) "Publicly accessible property" means public or private property to which the public or patrons have a reasonable expectation of relatively unrestricted access.

(6) "Registered technician" means a noncertified person who, having met the requirements of 355 IAC 4-2-8, is registered by the state chemist and thereby is authorized to engage in pesticide use and related activities while working under the direct supervision of a certified and licensed applicator.

(7) "State chemist" means the Indiana state chemist or his appointed agent.

(Indiana Pesticide Review Board; 357 IAC 1-11-1; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878)

357 IAC 1-11-2 Applicator certification and licensing

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4
Affected: IC 15-3-3.6-2

Sec. 2. (a) Except as provided in section 3 of this rule, a person may not use or supervise the use of any pesticide for community-wide mosquito abatement activities without having obtained a commercial applicator license in Category 8 from the state chemist.

(b) Completing the certification requirements as a commercial applicator (IC 15-3-3.6-6-2(7) *[sic., IC 15-3-3.6-2(7)]***) in Category 8 shall be a qualifying requirement for each of the licenses referenced in section 1(2) of this rule.**

(c) A person may satisfy the Category 8 certification requirements by either:

(1) completing the requirements established in 355 IAC 4-1 for a Category 8 applicator; or

(2) completing the requirements established in 355 IAC 4-1 for a Category 7a applicator and providing proof to the state chemist of practical community-wide mosquito abatement experience within the last five (5) years previous to the effective date of this rule.

(Indiana Pesticide Review Board; 357 IAC 1-11-2; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878)

357 IAC 1-11-3 Direct supervision of noncertified applicators

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 3. (a) A person who has not obtained a commercial applicator license may use a pesticide if the person is working under the direct supervision of a certified and licensed applicator employed by the business, agency, or organization that also employs the person.

(b) An applicator using pesticides for community-wide mosquito abatement activities is subject to all of the site awareness and direct supervision provisions of 355 IAC 4-2, except as described in section 1(4)(C) of this rule. *(Indiana Pesticide Review Board; 357 IAC 1-11-3; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878)*

LSA Document #02-332(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 610 DEPARTMENT OF LABOR

LSA Document #03-36(F)

DIGEST

Amends 610 IAC 4-2-1 to comply with amended federal Occupational Safety and Health Administration requirements for recording and reporting workplace injuries and illnesses for public employees. Repeals 610 IAC 4-2-11. Effective 30 days after filing with the secretary of state.

610 IAC 4-2-1
610 IAC 4-2-11

SECTION 1. 610 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

610 IAC 4-2-1 IOSHA applicable to public sector employers; volunteer fire companies

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1; IC 36-8-12

Sec. 1. (a) The Indiana occupational safety and health act, IC 22-8-1.1, pertains to and concerns public employment as well as private employment. IC 22-8-1.1 defines employer as, "any individual or type of organization, including the state and all its political subdivisions, which has in its employ one (1) or more individuals". Employee is defined as, "a person permitted to work by an employer in employment".

(b) Therefore, the statute and all promulgated standards, rules, and regulations are applicable to public sector as well as private sector employers. Provided, however, that **public employers must comply with** the requirements for reporting and recording occupational injuries and illnesses ~~applicable in the public sector are found in 610 IAC 4-2-11 and not in 610 IAC 4-4.~~ **found in 610 IAC 4-6 without regard to Standard Industrial Classification Code.**

(c) For the ~~purposes~~ **purpose** of the Indiana occupational safety and health act, "Volunteer fire companies", which exist pursuant to IC 36-8-12, shall be deemed public sector employers. *(Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Purpose; filed Apr 5, 1977, 10:16 a.m.: Rules and Regs. 1978, p. 467; filed Sep 9, 1981, 10:15 a.m.: 4 IR 1986; filed Jun 21, 1982, 3:00 p.m.: 5 IR 1607; filed Jan 8, 1986, 2:18 p.m.: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305; filed Jan 27, 2004, 7:00 p.m.: 27 IR 1879)*

SECTION 2. 610 IAC 4-2-11 IS REPEALED.

LSA Document #03-36(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 610 DEPARTMENT OF LABOR

LSA Document #03-37(F)

DIGEST

Amends 610 IAC 4-6-11 to comply with amended federal Occupational Safety and Health Administration requirements for recording criteria for cases involving occupational hearing loss. Effective 30 days after filing with the secretary of state.

610 IAC 4-6-11

SECTION 1. 610 IAC 4-6-11 IS AMENDED TO READ AS FOLLOWS:

610 IAC 4-6-11 Recording criteria for cases involving occupational hearing loss

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 11. (a) ~~Beginning on January 1, 2003,~~ If an employee's hearing test (audiogram) reveals that a **work-related** standard threshold shift (STS) has occurred **in one (1) or both ears, and the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero in the same ear as the STS (averaged at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz),** the employer must record the case on the Occupational Safety and Health Administration (OSHA) 300 Log. ~~by checking the "hearing loss" column.~~

(b) ~~Beginning on January 1, 2003,~~ Implementation of this section shall be as follows:

(1) As used in this rule, "STS" has the meaning as set forth in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the ~~most recent~~ **baseline** audiogram ~~for that employee,~~ of an average of ten (10) decibels or more at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz in one (1) or both ears.

(2) **Employers shall evaluate the current audiogram to determine whether an employee has an STS and a twenty-five (25) decibels hearing level as follows:**

(A) If the employee has never previously experienced a recordable hearing loss, the employer must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, the employer must compare the employee's current audiogram with the employee's

revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(B) Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, the employer must use the average hearing level at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz to determine whether or not the employee's total hearing level is twenty-five (25) decibels or more.

(3) When comparing audiogram results, the employer may adjust the results for the employee's age when the audiogram was taken using Table F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. **The employer may not use an age adjustment when determining whether the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero.**

(4) If the employer retests the employee's hearing within thirty (30) days of the first test, and the retest does not confirm the **recordable** STS, the employer is not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the STS, the employer must record the hearing loss illness within seven (7) calendar days of the retest. **If subsequent audiometric testing performed under the testing requirements of the noise standard indicates that an STS is not persistent, the employer may erase or strike out the recorded entry.**

(5) Hearing loss is presumed to be work related if ~~the employee is exposed to noise in the workplace at an eight (8) hour time-weighted average of eighty-five (85) decibels or greater, or to a total noise dose of fifty percent (50%), as defined in 29 CFR 1910.95. For hearing loss cases where the employee is not exposed to this level of noise, the employer~~ **an event or exposure in the work environment either caused or contributed to the hearing loss or significantly aggravated a preexisting hearing loss. Employers** must use the ~~criteria~~ **rules contained** in section 6 of this rule to determine ~~if the~~ **whether** hearing loss is work related.

(6) If a physician or other licensed health care professional determines that the hearing loss is not work related or has not been significantly aggravated by occupational noise exposure, the employer is not required to consider the case work related or to record the case on the OSHA 300 Log.

(7) Employers must check the 300 Log column for hearing loss when entering a recordable hearing loss case on the OSHA 300 Log.

~~(c) Until December 31, 2002, employers are required to record a work related hearing loss averaging twenty-five (25) decibels or more at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz in either ear on the OSHA 300 Log. When comparing audiogram results, the employer must use the employee's original baseline audiogram for comparison. The employer may make a correction for presbycusis (aging) by using the tables in Appendix F of 29 CFR 1910.95.~~ *(Department of Labor; 610 IAC 4-6-11; filed Sep 26, 2002, 11:22 a.m.: 26 IR 361; filed Jan 27, 2004, 7:00 p.m.: 27 IR 1879)*

LSA Document #03-37(F)
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Approved by Attorney General: January 16, 2004
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Incorporated Documents Filed with Secretary of State: None

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

LSA Document #03-189(F)

DIGEST

Amends 840 IAC 1-1-6 concerning the examination for licensure to practice as a health facility administrator. Effective 30 days after filing with the secretary of state.

840 IAC 1-1-6

SECTION 1. 840 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

840 IAC 1-1-6 Examination
Authority: IC 25-19-1-4
Affected: IC 25-19-1-3

Sec. 6. (a) Every applicant for a license as an H.F.A., after meeting the requirements for qualification as set forth in section 4 of this rule, shall pass successfully a written ~~and/or~~ **or** oral examination, **or both,** at the discretion of the board that shall include, but need not be limited to, the following:

(1) Applicable standards of environmental health and safety.
(2) Local health and safety regulation.
(3) General administration.
(4) Psychology of patient care.
(5) Principles of medical care.
(6) Pharmaceutical services and drug handling.
(7) Personal and social care.
(8) Therapeutic and supportive care and services in long term care.
(9) Departmental organization and management.
(10) Community interrelationships.

(b) Every applicant for an H.F.A. license shall be required to pass the examination for such license with a grade established by the board in accordance with methods and procedures set up by the board.

(c) All applications for the examination must be complete in

every respect, including accompanying data and the required fee, at least thirty (30) days prior to the examination for which application is being made. Any applicant whose application does not meet these requirements will not be permitted to take the examination.

(d) An applicant must complete successfully the licensure examination within one (1) calendar year from the time of notification of failure to pass the original exam. If an applicant fails the examination three (3) times, the following requirements must be met before submitting a new application for examination:

(1) Submit proof of the completion of at least two hundred (200) contact hours of continuing education approved by the board.

(2) Submit a new application for entry into the administrator-in-training program.

(3) **Complete the required administrator-in-training program in a minimum of six (6) months and a maximum of twelve (12) months for a minimum total of one thousand forty (1,040) hours and** submit an affidavit of completion of the ~~remedial~~ A.I.T. program.

In addition, the applicant shall meet all other licensing requirements in force and effect at the time of reapplication. *(Indiana State Board of Health Facility Administrators; Rule 7; filed May 26, 1978, 9:09 a.m.: 1 IR 246; filed May 18, 1979, 9:02 a.m.: 2 IR 842; filed May 2, 1985, 10:33 a.m.: 8 IR 1148; filed Sep 29, 1987, 2:08 p.m.: 11 IR 794; readopted filed May 1, 2002, 10:35 a.m.: 25 IR 2857; filed Feb 6, 2004, 9:15 a.m.: 27 IR 1880)*

LSA Document #03-189(F)
Notice of Intent Published: 26 IR 3676
Proposed Rule Published: November 1, 2003; 27 IR 565
Hearing Held: December 4, 2003
Approved by Attorney General: January 30, 2004
Approved by Governor: February 5, 2004
Filed with Secretary of State: February 6, 2004, 9:15 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

LSA Document #03-190(F)

DIGEST

Amends 840 IAC 1-2-1 concerning continuing education for renewal of licensure to practice as a health facility administrator. Effective 30 days after filing with the secretary of state.

840 IAC 1-2-1

SECTION 1. 840 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

840 IAC 1-2-1 Continuing education; credit requirements

Authority: IC 25-19-1-4
Affected: IC 25-19-1

Sec. 1. (a) An H.F.A. who is not currently or previously licensed in another state is not required to complete the continuing education requirements for the two (2) year licensing period in which the license was issued.

(b) An H.F.A. must complete at least forty (40) continuing education hours during the previous two (2) year licensing period.

(c) If an H.F.A. attends an approved program in another state with a mandatory continuing education requirement, the board will accept the approved hours.

(d) Continuing education credit may not be carried over from one (1) biennial licensure renewal period to another.

(e) The forty (40) hours biennial continuing education requirement shall not be increased or decreased unless this section is duly amended and all licensees are notified in writing at the date of license renewal that the following renewal will require an increased or decreased number of hours of continuing education.

(f) The continuing education requirement shall be satisfied by participating in programs that must be conducted by a board approved sponsor.

(g) Continuing education courses offered by accredited colleges **are acceptable** if the course content pertains to the practice of ~~health facility~~ **H.F.** administration.

(h) Accredited college courses related to the practice of ~~health facility~~ **H.F.** administration ~~Proof of completion of the course, including the grade earned and the college credit earned, or a statement from the college that the course was audited, must be submitted with the renewal application.~~ **are acceptable forms of continuing education.** The following conversion will be used for continuing education credit:

(1) One (1) semester hour equals fifteen (15) contact hours.

(2) One (1) quarter hour equals ten (10) contact hours.

(Indiana State Board of Health Facility Administrators; 840 IAC 1-2-1; filed Jan 5, 1984, 2:33 p.m.: 7 IR 577; filed Sep 29, 1987, 2:08 p.m.: 11 IR 797; filed Feb 14, 1991, 1:30 p.m.: 14 IR 1438; readopted filed May 1, 2002, 10:35 a.m.: 25 IR 2859; filed Feb 6, 2004, 9:15 a.m.: 27 IR 1881)

LSA Document #03-190(F)
Notice of Intent Published: 26 IR 3677
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Incorporated Documents Filed with Secretary of State: None

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-22(F)

DIGEST

Amends 865 IAC 1-7-3 to revise what a registered land surveyor may include in the registrant's plans. Amends 865 IAC 1-12 to revise the standards for the competent practice of land surveying. Repeals 865 IAC 1-10-23 and 865 IAC 1-10-24. Effective 30 days after filing with the secretary of state.

865 IAC 1-7-3
865 IAC 1-10-23
865 IAC 1-10-24
865 IAC 1-12-2
865 IAC 1-12-3
865 IAC 1-12-5
865 IAC 1-12-6
865 IAC 1-12-7
865 IAC 1-12-9
865 IAC 1-12-10
865 IAC 1-12-11
865 IAC 1-12-12
865 IAC 1-12-13
865 IAC 1-12-14
865 IAC 1-12-18

SECTION 1. 865 IAC 1-7-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-7-3 Use of seal and signature; acceptance of full responsibility

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 3. (a) The seal and signature of a registrant on any drawings, documents, or instruments signifies the registrant's acceptance of full responsibility for the professional work represented thereon, except as another registrant shall have assumed a limited responsibility for portions of the work in accordance with ~~the provisions~~ of *[sic.]* section 2(e) of this rule.

(b) A registrant may include in the registrant's plans certain ~~predesigned manufactured equipment or~~ products ~~which~~ **that** have become established as acceptable for the proposed use when such items:

(1) meet standards established by nonprofit trade organizations;

(2) meet the requirements for the proposed use as indicated by tests performed by a competent, unbiased testing agency; ~~or~~

(3) are mechanical or other types of machinery or systems guaranteed by a reputable manufacturer; or

(4) do not affect the structural safety of the project.

(State Board of Registration for Land Surveyors; Rule 7, Sec 4; filed Feb 29, 1980, 3:40 p.m.: 3 IR 633; filed Oct 13, 1992, 5:00 p.m.: 16 IR 879; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1882) NOTE: 864 IAC 1.1-7-4 was renumbered by Legislative Services Agency as 865 IAC 1-7-3.

SECTION 2. 865 IAC 1-12-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-2 Definitions; abbreviations

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-4-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Controlling monument" means any artificial, physical, or record monument called for in a record plat or land title description and controls the location, dimensions, and configuration of the described tract.

(c) "EDM" refers to electronic distance measurements.

~~(b)~~ **(d)** "Land surveyor" means:

(1) a registered land surveyor; or

(2) an individual who is:

(A) an employee or subordinate of a registered land surveyor; and

(B) exempt from licensure under IC 25-21.5-4-2.

(e) "Original survey" means a survey that is executed for the purpose of locating and describing real property that has not been previously described in documents conveying an interest in said real property.

~~(c)~~ **(f)** "Registered land surveyor" means an individual who has been registered by the board in the profession of land surveying under IC 25-21.5.

~~(d)~~ **(g)** "Retracement ~~or "record document~~ survey" means a survey of real property ~~which~~ **that** has been previously described in documents conveying an interest in said real property.

~~(e) "Original survey" means a survey that is executed for the purpose of locating and describing real property which has not been previously described in documents conveying an interest in said real property.~~

~~(f) "EDM" refers to electronic distance measurements.~~

~~(g) "tu" refers to theoretical uncertainty.~~

~~(h) "Theoretical uncertainty" refers to theoretical uncertainty of measurements.~~

~~(i) "Theoretical uncertainty of measurements" means the radius of a circle which circumscribes an area which contains the probable true location of a specified point.~~

(h) "Right-of-way" means that land taken by either

easements or fee simple title for the linear routes identified in subsection (i).

~~(j)~~ **(i)** "Route survey" refers to surveys executed for the purpose of acquiring an interest in the tracts of land required for highways, railroads, waterways, pipelines, electric lines, or any other linear transportation or utility route. It does not include surveys executed for acquisition parcels that are of even width and immediately adjacent to an existing title, easement, or right-of-way line and do not require a property survey in order to prepare an accurate legal description for the parcel. Route surveys are not considered either original surveys or retracement surveys.

~~(k) "Right-of-way" means that land taken by either easements or fee simple title for the linear routes identified in subsection (j).~~

~~(l) "Controlling monument" means any artificial, physical, or record monument called for in a record plat or land title description and controls the location, dimensions, and configuration of the described tract.~~

~~(m)~~ **(j)** "Subdivision plat" means a plat of subdivision of land prepared in accordance with state plat statutes or local subdivision regulations, or both.

(k) "Theoretical uncertainty" refers to theoretical uncertainty of measurements.

(l) "Theoretical uncertainty of measurements" means the radius of a circle, which circumscribes an area, that contains the probable true location of a specified point.

(m) "Theory of location" means applying federal laws, including 43 U.S.C. 751 through 43 U.S.C. 775, state and local laws, together with court precedent to establish the position of real property corners.

(n) "tu" refers to theoretical uncertainty. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-2; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3909; errata filed Feb 5, 1990, 4:15 p.m.: 13 IR 1189; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 885; filed Oct 14, 1993, 5:00 p.m.: 17 IR 408; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1882) NOTE: 864 IAC 1.1-13-2 was renumbered by Legislative Services Agency as 865 IAC 1-12-2.*

SECTION 3. 865 IAC 1-12-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-3 Surveyor responsibility

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-4-2; IC 25-21.5-7-3

Sec. 3. (a) A registered land surveyor shall be personally responsible for planning and supervising the training, procedures, and daily activities of the nonregistered employees or subordinates involved in the surveys who are acting as exempt persons under IC 25-21.5-4-2. These activities will include, but not necessarily be limited to, the following:

(1) Client contact.
(2) Research.
(3) Collection of field data.
(4) Note reduction.
(5) Computation.
(6) Office analysis.
(7) Drafting.
(8) Preparation of certificates and reports.

(b) The daily activities by nonregistered employees or subordinates referred to in subsection (a) may not continue during any extended absences of the responsible registered land surveyor unless another registered land surveyor is in responsible charge during the land surveyor's absence.

(c) The procedures followed and the decisions made by persons under the registered land surveyor's supervision shall be regularly and systematically reviewed and approved by the registered land surveyor prior to signing the survey plat.

(d) "Supervision", as used in this section, shall be deemed to require:

(1) such control by the registered land surveyor, that the registered land surveyor can certify that he or she is knowledgeable of, and has reviewed and approved, all actions pertaining to the surveys by persons not licensed who have participated in the survey; **and**

(2) that all persons participating in the survey shall be regular employees of the registered land surveyor, the registered land surveyor's employer, or another registered land surveyor.

~~(e) "Supervision", as used in this section, shall be deemed to require that all persons participating in the survey shall be regular employees of the registered land surveyor, the registered land surveyor's employer, or another registered land surveyor.~~

~~(f) Any~~ **(e) In addition to the requirements in IC 25-21.5-7-3, each** office **of a firm, partnership, or corporation** offering to perform land surveys must have a registered land surveyor in charge of the operations, and that registered land surveyor, **who must be a full-time employee or principal of the partnership or firm or an officer of the corporation,** must have full **responsible** control of the survey operations. ~~It is essential that~~ This registered land surveyor **must** maintain regular hours at that office ~~during which he or she can be contacted in person by the public and/or the nonlicensed employees participating in those surveys.~~ **adequate for client contact and employee supervision as defined in subsection (d).**

(f) For purposes of this rule, an individual practices as a principal by being:

(1) a registered land surveyor; and

(2) the individual in charge of the organization's land surveying practice, either alone or with other registered land surveyors.

(g) A registered land surveyor shall not affix his or her seal on any surveying work unless:

(1) the registered land surveyor personally did the surveying work;

(2) the surveying work was performed by a nonregistered employee or subordinate following the requirements of subsection (a) or by the employees of another registered land surveyor as allowed by subsection ~~(e);~~ **(d);** or

(3) the registered land surveyor is certifying additional survey work based on a survey executed according to this rule and certified by a registered land surveyor working on the same project.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-3; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3909; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 886; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1883) NOTE: 864 IAC 1.1-13-3 was renumbered by Legislative Services Agency as 865 IAC 1-12-3.

SECTION 4. 865 IAC 1-12-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-5 Property surveys affected

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 5. ~~All Indiana real property~~ **Retracement** surveys ~~including~~ **and original** surveys ~~or inspections used in conjunction with mortgage transactions,~~ **and all updates of previously completed surveys** must fully comply with ~~the provisions of~~ this rule except the following:

(1) Surveyor location reports as provided for in sections 27 through 29 of this rule are only subject to sections 1 through 4, 6, and 27 through 29 of this rule.

(2) Construction surveys made for the purpose of marking the limits of existing easements **or rights-of-way** for the construction of improvements within the easement **or rights-of-way** must be executed by a registered land surveyor but are only subject to the provisions of sections 1 through 4 and 6 of this rule.

~~(3) A property survey last certified before January 1, 1990, and less than ten (10) years prior to the current date may be recertified for use in a current real estate transaction by the original registered land surveyor or a registered land surveyor in the same firm who has personal knowledge of the field and office procedures used in the execution of said survey. The recertification must state the following:~~

~~(A) That no survey of the premises was performed other than an inspection by the registered land surveyor or his or her qualified employee.~~

~~(B) That the inspection revealed no substantial change that affects the external boundary or other title that matters from those matters reported on the prior survey.~~

~~(C) That, after reviewing the prior survey plat, the measurement and office procedures used in the execution of that survey, and the current description of the surveyed premises and the adjoiners, it is the opinion of the registered land surveyor that, to the best of his or her knowledge, it generally conforms with the standards in this rule.~~

~~Such a recertified survey is not required to be recorded.~~

(3) Delineation or demarcation and placement of stakes or markers for the purpose of constructing fences, buildings, walls, or other improvements on or in close proximity to a land boundary, except for property corner monumentation, are only subject to sections 1 through 4 and 6 of this rule provided the land surveyor has found acceptable evidence of the boundary location in accordance with this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-5; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; filed Oct 13, 1992, 5:00 p.m.: 16 IR 887; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1884) NOTE: 864 IAC 1.1-13-5.1 was renumbered by Legislative Services Agency as 865 IAC 1-12-5.

SECTION 5. 865 IAC 1-12-6 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-6 Field notes

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 6. When conducting an original survey or a retracement ~~or record document~~ survey, the land surveyor shall record in the field notes all pertinent information, measurements, and observations made in the field during the course of a survey in a manner that is clear and intelligible to other land surveyors who may use the information so recorded. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-6; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1884) NOTE: 864 IAC 1.1-13-6 was renumbered by Legislative Services Agency as 865 IAC 1-12-6.*

SECTION 6. 865 IAC 1-12-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-7 Measurements for retracement surveys and original surveys

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 7. (a) When conducting a retracement ~~or record document~~ survey or an original survey, the land surveyor shall be

responsible to use the minimum standards of measurement provided for in this section. However, when platting laws set forth technical minimums for original surveys more stringent than those stated in this section, the more stringent standards shall be followed to the extent of the difference.

(b) Measurements generally **shall be:**
(1) ~~shall be~~ obtained with a precision compatible with the type of survey involved and with the size and shape of the parcel involved;
(2) ~~shall be~~ taken with a precision that is consistent with that required by the agreement with the client but may not be less precise than defined in this section; and
(3) ~~shall be~~ shown on the plat with a number of significant figures representative of the precision of the work.

(c) The measurement specifications contained in subsection (d) will apply for all retracement surveys ~~surveys based on record documents,~~ and original surveys.

(d) The following specifications shall be used for the location of property boundaries with respect to the referenced controlling corners:

Class of Survey	Theoretical Uncertainty (tu)
A	plus or minus .10 feet
B	plus or minus .25 feet
C	plus or minus .50 feet
D	plus or minus 1.00 feet
E	
all other surveys	to be negotiated with the client

(e) The classes of surveys listed in subsection (d) shall fall into the following sizes:
(1) Class A – Small area wherein dense monument controls exist, as in a downtown commercial area. Lots are typically fifty (50) feet by one hundred (100) feet. Periphery and beginning distance is less than four hundred (400) feet.
(2) Class B – Longest side is typically under two hundred fifty (250) feet and periphery and beginning distance is less than one thousand (1,000) feet.
(3) Class C – Longest side is typically under one thousand (1,000) feet and periphery and beginning distance is less than five thousand (5,000) feet.
(4) Class D – All sides are typically over one thousand (1,000) feet and periphery and beginning distance is less than twelve thousand (12,000) feet.
(5) Class E – The precision of larger surveys shall be negotiated with the client and shall be clearly stated on the plat of survey.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-7; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1884) NOTE: 864 IAC 1.1-13-7 was renumbered by Legislative Services Agency as 865 IAC 1-12-7.

SECTION 7. 865 IAC 1-12-9 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-9 Preliminary research and investigation on retracement surveys
Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 9. When conducting a retracement ~~or record document~~ survey, a land surveyor shall do the following:
(1) Obtain the record description of the parcel to be surveyed as well as the record description of the adjoining properties ~~as necessary~~ to reveal any gaps or overlaps with the adjoining properties.
(2) Obtain copies of any recorded subdivision plats that relate to the survey.
(3) Obtain from public offices, copies of any maps, documents, and field notes that relate to the survey.
(4) Obtain copies of data that relate to the survey that are available from known private sources.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-9; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1885) NOTE: 864 IAC 1.1-13-9 was renumbered by Legislative Services Agency as 865 IAC 1-12-9.

SECTION 8. 865 IAC 1-12-10 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-10 Field investigation for retracement surveys
Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 10. When conducting a retracement ~~or record document~~ survey, a land surveyor shall do the following:
(1) Search for controlling physical monuments and, when found, weigh their reliability.
(2) Search for and locate monuments that:
(A) reference missing control monuments; and
(B) substantiate control monuments that have been obliterated.
(3) Search for and locate other monuments and real evidence ~~which~~ **that** are necessary to the survey.
(4) Investigate possible parol evidence supporting the positions of obliterated control monuments and obtain the necessary ~~affidavit(s)~~ **affidavit or affidavits** from individuals involved.
(5) Obtain necessary measurements to correlate all found evidence, including the relationship to adjoining properties.
(6) Obtain sufficient check measurements to satisfactorily verify the work.
(7) Locate physical evidence of possession between

adjoiners, make comments on possible age of possession, **and** verify age by parol evidence if possible.

(8) Survey field notes shall be in the form required by section 6 of this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-10; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1885) NOTE: 864 IAC 1.1-13-10 was renumbered by Legislative Services Agency as 865 IAC 1-12-10.

SECTION 9. 865 IAC 1-12-11 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-11 Surveyor conclusions in retracement survey

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 11. When conducting a retracement ~~or record document~~ survey, a land surveyor shall do the following:

(1) Make any necessary computations to verify the correctness of measurements obtained.

(2) Make any necessary computations to determine and verify the position of the monuments, adjoining properties, and any parol evidence.

(3) Evaluate the evidence.

(4) In the event of the discovery of a material disagreement with the work of another surveyor, attempt to contact the other surveyor and investigate the disagreement.

(5) Apply the ~~proper~~ theory of location ~~in accordance with law or a precedent, and finalize the establishment of the survey corners.~~ **as defined in section 2 of this rule.**

(6) Set any final monuments required by section 18 of this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-11; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2245; filed Oct 13, 1992, 5:00 p.m.: 16 IR 888; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1886) NOTE: 864 IAC 1.1-13-11 was renumbered by Legislative Services Agency as 865 IAC 1-12-11.

SECTION 10. 865 IAC 1-12-12 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-12 Publication of retracement survey results

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 12. (a) When conducting a retracement ~~or record document~~ survey or an original survey, a registered land surveyor shall do the following:

(1) Furnish the client with a written surveyor's report ~~which,~~ **that,** in addition to other pertinent data, **explains the theory of location applied in establishing or retracing the lines and corners of the surveyed parcel and** gives the registered land surveyor's professional opinion of the cause and the amount of uncertainty in ~~the~~ **those** lines and corners ~~found or established by the survey~~ because of the following:

(A) Availability and condition of reference monuments.

(B) Occupation or possession lines.

(C) Clarity or ambiguity of the record description used ~~and/or~~ *[sic., or]* adjoiner's descriptions, **or both.**

(D) The theoretical uncertainty of the measurements.

(2) Record the plat of survey and the associated surveyor's report in the county recorder's office in the county where the property is located when:

(A) a new tax parcel ~~is~~ **will be** created ~~by~~ **based on** the survey;

(B) a survey of an unsubdivided tract or a portion of a subdivided lot has not been previously recorded;

(C) if, in the registered land surveyor's opinion, a survey of a whole subdivided lot or lots is substantially at variance with the subdivision plat, previously recorded surveys, ~~or the~~ monuments, or evidence of possession;

(D) if, in the registered land surveyor's opinion, the monuments, monument witnesses, evidence of possession, or description is not consistent with the last recorded survey of the parcel;

(E) it is required by law; or

(F) the plat of survey contains a new subdivision plat that will subsequently be recorded and must be cross-referenced to the previously recorded survey plat.

(b) The recorded plat of survey shall show the name of the owner of the property on the recorded plat of survey according to the county tax records at the time the survey is recorded and shall be cross-referenced to the latest record plat of survey of the property, if any is found.

(c) The plat of survey and the associated surveyor's report shall be recorded:

(1) in the case of an original or retracement survey (not previously recorded) ~~which~~ **that** contains a proposed new subdivision plat, prior to recording the new subdivision plat; or

(2) in the case of retracement or original surveys not described in subdivision (1):

(A) within three (3) months of the survey certification date; or

(B) within three (3) years and three (3) months of the survey certification date in those instances where the client signs an objection, which must contain the following statement:

"I, the undersigned, hereby request that the following identified survey, certified to me":

(Indicate one (1) or both of the following:)

(i) Shall not be recorded for a period of three (3) years and three (3) months from the date of certification.

(ii) Shall not contain the name of the undersigned client on the survey recorded.

Signed: _____
Date: _____
Certifying Surveyor:
Certificate Date:
Job Number:
Brief Description:

A copy of the signed statement shall be kept with the land surveyor's file.

(d) Nothing contained in this rule shall require the registered land surveyor to furnish any survey documents to the client ~~nor~~ **or** record them unless the client has satisfied the terms of the surveying engagement.

(e) Nothing contained in this rule shall prevent the registered land surveyor from furnishing a pro forma copy of the survey to the client for use until the certified survey is requested **provided the survey is clearly marked "PRO FORMA SURVEY".** *(State Board of Registration for Land Surveyors; 865 IAC 1-12-12; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2245; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; errata, 16 IR 1188; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1886) NOTE: 864 IAC 1.1-13-12 was renumbered by Legislative Services Agency as 865 IAC 1-12-12.*

SECTION 11. 865 IAC 1-12-13 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-13 Retracement survey plats

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 13. When conducting a retracement ~~or record document~~ survey, a registered land surveyor shall furnish the client with the surveyor's report and a copy of the plat of survey of the premises drawn to an appropriate scale in such a manner that the data shown will be clearly legible when the plat is reduced to sheets suitable for recording ~~which~~ **that** are no larger than eleven (11) inches by seventeen (17) inches and no smaller than eight and one-half (8 ½) inches by eleven (11) inches. The plat of survey shall show the following information at a minimum:

(1) The client's name, date of the fieldwork, surveyor's file number, and the name, address, signature, and registration number of the surveyor responsible for the work.

(2) Record document description of the parcel surveyed and any new, modified, or consolidation description with an explanation in the surveyor's report as to why the new description was done, together with a statement regarding the location of the new description relative to the record description. If necessary to define the location, a vicinity map shall be provided.

(3) North arrow, area, and scale, including a graphic scale.

(4) Angles or bearings. When bearings are shown, their basis shall be indicated.

(5) All pertinent dimensions. On dimensions other than those measured, sufficient notations shall be used to identify their source, such as the following:

(A) Recorded measurement (Rec).

(B) Calculated from record values (Calc. Rec.).

(6) All pertinent monuments, with a notation indicating which were found and which were set, including those required to be set by section 18 of this rule, identified as to their character, size, and location including their location relative to the surface of the ground. Found monuments shall be accompanied by a reference to their origin when it is known. Where there is no available documented reference, it shall be noted on the plat.

(7) The location of all monuments and physical evidence of possession on or beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent.

(8) Any physical evidence of possession appurtenant to either the surveyed premises or the adjoining property that is on, near, or across any exterior boundary of the premises, or depicted interior setback or easement line on the premises that may have been a factor in the location of such line. Show the location by the shortest distance to such line. Failure to show any such evidence will be taken to indicate that there was none.

(9) Any lakes, streams, known ~~legal~~ **regulated** drains, or ~~legal~~ **regulated** drain ~~easements~~ **rights-of-way** on or within seventy-five (75) feet of the surveyed premises. A detailed location, **based on applicable statutes and rules,** is required when a boundary or easement is determined thereby.

(10) Any evidence of use of the surveyed premises by others.

(11) Adjoining parcels identified by title description or record reference. Map delineation must be such that contiguity, gaps, and overlaps with adjoining parcels are clearly shown. Show only the portion of adjoining tracts relevant to the location of the surveyed tract. Gaps and overlaps on the perimeter of the survey shall be dimensioned. Gaps and overlaps interior to the surveyed parcel shall be depicted, but must be dimensioned only if the client requests.

(12) Any easements or setback lines affecting the survey ~~which~~ **that** were created by a subdivision plat unless they are omitted at the request of the client. It must be noted on the plat of survey if they are omitted for this reason.

(13) Any other easements or setback lines affecting the survey, as required, and when documentation is furnished by the client.

(14) Show zoning ordinance classification references according to documentation provided by the client. Any other zoning ~~classification data~~ **use certifications** shall be limited to those facts that can be counted or measured.

(15) Sufficient data to clearly indicate the theory of location applied in finalizing the locations of the corners, any data at variance with this theory of location, **and** sufficient data to allow the retracement without difficulty of all pertinent lines and corners shown on the plat.

(16) A certificate stating that the survey was performed

wholly or in part (state which part) by or under the direction of the registered land surveyor, and to the best of the registered land surveyor's knowledge and belief was executed according to survey requirements in this rule. This certificate shall bear the signature, registration number, and seal of the registered land surveyor and date of the certificate.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-13; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3913; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2246; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1887) NOTE: 864 IAC 1.1-13-13 was renumbered by Legislative Services Agency as 865 IAC 1-12-13.

SECTION 12. 865 IAC 1-12-14 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-14 Original survey preliminary research

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 14. When conducting an original survey, a land surveyor shall do the following:

(1) Obtain or prepare the documents establishing the intended position of the lines to be created by the original survey, such as:

(A) client's approved sketch;

(B) instructions defining the lines; and

(C) tentative subdivision map.

(2) Obtain copies of the laws regulating division of property that govern in the area in which the property is located.

(3) Survey the parcel upon which the original survey is to be based, or such portion thereof as is relevant to the proposed work. This work ~~should~~ **must** be in accordance with ~~the procedural standards for retracement surveys as set forth in~~ **section 13 of** this rule. Any conflicts or gaps between the lines of the retracement survey and the adjoiners lines that affect newly created tracts must be clearly depicted on the original survey, showing which of the new tracts are affected and to what extent.

(4) Conduct field surveys to determine the location of planimetric or topographic features that are to control the intended position of the lines being created.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-14; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2247; filed Oct 13, 1992, 5:00 p.m.: 16 IR 890; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1888) NOTE: 864 IAC 1.1-13-15 was renumbered by Legislative Services Agency as 865 IAC 1-12-14.

SECTION 13. 865 IAC 1-12-18 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-18 Original and retracement survey monumentation

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 18. (a) When conducting a retracement ~~or record document~~ survey or an original survey, a registered land surveyor shall be responsible to set monuments in accordance with the following:

(1) ~~Generally,~~ **Except as provided in subsection (a)(7)** *[subdivision (7)]***, a monument, as defined in subsections (a)(2) through (a)(6)** *[subdivisions (2) through (6)]***, shall be set at every lot or parcel corner being surveyed, including the interior lots of a subdivision. Corners to be set include** the beginning and end of curves and the intersection of lines ~~on the perimeter of all original or retracement surveys, including new subdivision plats, shall be marked with physical monuments that are of a type and character, and set in a manner providing a degree of permanency, consistent with the terrain, physical features, intended use, and character of the corner being marked. A sufficient number of monuments must be set to facilitate the complete reestablishment of the survey even if a substantial number of the monuments are disturbed or destroyed.~~ **except where the setting of a monument near another monument would cause confusion. Further, a monument is not required to be set if there is an existing monument at the corner that is within the limits of theoretical uncertainty for the class of survey being performed.**

(2) Monuments set in unpaved locations shall be five-eighths (⅝) inch diameter or larger iron or steel ~~rebars~~ **rods, reinforcement bars,** or **galvanized** pipes weighing a minimum of one (1) pound per foot and being at least twenty-four (24) inches long **and set with not less than eighteen (18) inches below grade.** Other monuments may be used if they are made of material of similar **or greater** durability, ~~which includes an element that~~ **size, and character and** can be found by a device capable of detecting ferrous or magnetic objects. ~~Such monuments shall have a substantial plastic or metal cap permanently affixed thereto showing the registered land surveyor's professional license number and/or the name or identification number of the land surveying firm or government agency.~~

(3) Where practical, monuments in ~~paved locations~~ **pavement** shall be set according to the requirements contained in ~~subdivision (2)~~ **subsection (a)(2)** *[subdivision (2)]***. However, when it is not practical to set a monument in accordance with subsection (a)(2)** *[subdivision (2)]***, then a two (2) inch or longer, one-fourth (¼) inch or larger diameter, magnetic concrete nail, or similar magnetic monument, shall be set.**

(4) ~~Survey points, where~~ Monuments ~~as defined in subdivision (2) or (3) cannot readily be set, must be marked by a drill hole, cut cross, notch, railroad spike, or other similar permanent mark and referenced to any nearby witness monuments or permanent objects, such as building foundations or concrete head walls.~~ **set under subsection (a)(2) or (a)(3)** *[subdivision (2) or (3)]* **shall have a substantial plastic or metal tag or cap permanently affixed showing the regis-**

tered land surveyor's surname and professional license number or board issued firm/agency identification number.

(5) ~~Any comparable or better~~ **Where** monuments ~~required by more stringent local ordinances shall~~ **as defined in subsection (a)(2) or (a)(3)** *[subdivision (2) or (3)]* **cannot** be set, **the survey points must be marked by a drill hole, cut cross, notch, or other similar permanent mark and referenced to any nearby witness monuments or permanent objects, such as building foundations or concrete head walls.**

(6) Monuments required by local ordinances shall be set provided they meet or exceed the requirements in subsections (a)(2) and (a)(3) *[subdivisions (2) and (3)]***.**

~~(6) When conditions warrant setting~~ **(7) Except at interior lot corners not adjoining a street right-of-way line, where it is not possible or practical to set a monument at the survey point, then** a monument ~~on an~~ **shall be** offset **and** the location shall be selected so that the monument lies on a line of the survey or on a prolongation of such line. Offset monuments shall be identified as such on the plat and, if possible, in the field. **However, if existing monuments fall within the theoretical uncertainty of the survey, a monument will not be required to be set.**

~~(7)~~ **(8) If recovery of the monument would be difficult due to the topography or other features of the land, the** monuments shall be witnessed or referenced in such a manner that will facilitate ~~the~~ **their** recovery. ~~of the monuments by surveyors.~~

~~(8)~~ **(9)** Monuments shall be marked, such as ribbon, paint, or lath, to facilitate the recovery of the monument by the client.

(10) It shall be the responsibility of the land surveyor certifying the subdivision plat to set all monuments required by this section in a new subdivision.

(b) ~~Subsection (a)(2) through (a)(3) shall apply only to~~ Monuments **shall be** set ~~after Decter 31, 1991.~~ **prior to providing the client with the survey documents required by this rule. However, in the case of new subdivisions where, in the opinion of the surveyor, it is probable the individual lot monuments will be disturbed by construction, only the perimeter of the subdivision, or section thereof, must be monumented prior to recordation. In this situation, the setting of the individual lot monuments may be delayed until no later than:**

(1) after construction is complete (including buildings); or

(2) two (2) years after recordation of the subdivision plat or, if the subdivision is platted by sections, after recordation of each section;

whichever occurs first. In new subdivisions, if monuments are to be set prior to recording, then the placement of monuments shall be shown on the subdivision plat. If monuments are to be set after construction is complete, the surveyor shall record an affidavit, cross-referenced to the recorded plat, showing which monuments were set and which were found, the dates the monuments were set or found, together with a certification that states to the best of the surveyor's knowledge and belief the information contained in the affidavit is true and correct. Nothing in this subsection shall be construed to require the surveyor to wait until construction is completed to place monuments.

(c) A surveyor is not required to replace or restore any monument that the surveyor has set that has been moved, disturbed, or destroyed after its original placement for the current survey.

~~(c)~~ ~~Any~~ **(d)** Identification numbers, other than registered land surveyor's registration numbers, used by a land surveying firm or government agency under subsection (a)(2) or (a)(3) must be assigned and authorized for use by the state board of registration for land surveyors upon written request. **Request for firm or agency numbers must be in writing on forms provided by the board.** *(State Board of Registration for Land Surveyors; 865 IAC 1-12-18; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2248; filed Oct 13, 1992, 5:00 p.m.: 16 IR 891; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1888) NOTE: 864 IAC 1.1-13-19 was renumbered by Legislative Services Agency as 865 IAC 1-12-18.*

SECTION 14. THE FOLLOWING ARE REPEALED: 865 IAC 1-10-23; 865 IAC 1-10-24.

LSA Document #03-22(F)
Notice of Intent Published: 26 IR 1596
Proposed Rule Published: September 1, 2003; 26 IR 3950
Hearing Held: October 10, 2003
Approved by Attorney General: January 9, 2004
Approved by Governor: January 20, 2004
Filed with Secretary of State: January 26, 2004, 11:00 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #00-285(PC)

Under IC 4-22-8-4(c), corrects the following typographical error in the "Other Notice" printed at 25 IR 946 concerning LSA Document #00-285(F):

In subdivision (2), delete "312 IAC 25-4-44(b)(4)" and insert "312 IAC 25-4-45(b)(4)".

Retroactively effective to the same date and time as LSA Document #00-285(F).

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in the Indiana Administrative Code, 2004 edition:

(1) In 410 IAC 6-6-1(f), delete "675 IAC 13-2.1-89" and insert "675 IAC 13-2.4".

(2) In 410 IAC 6-6-1(g), delete "675 IAC 13-2.1-89" and insert "675 IAC 13-2.4".

(3) In 410 IAC 6-6-1(h), delete "IC 13-1-7" and insert "IC 16-41-27".

(4) In 410 IAC 6-6-1(i), delete "IC 13-1-7" and insert "IC 16-41-27".

(5) In 410 IAC 6-6-8(b), delete "327 IAC 8-8-1(d)" and insert "327 IAC 8-3.3-5".

(6) In 410 IAC 6-6-13, delete "410 IAC 6-2" and insert "410 IAC 6-2.1".

(7) In 410 IAC 6-6-14.1(a), delete "IC 13-1-7-29" and insert "IC 16-41-27-25".

(8) In 410 IAC 6-6-14.1(a)(1), delete "IC 13-1-7" and insert "IC 16-41-27".

(9) In 410 IAC 6-6-14.1(a)(2), delete "IC 13-1-7" and insert "IC 16-41-27".

(10) In 410 IAC 6-6-14.1(d), delete "IC 13-1-7-19" and insert "IC 16-41-27-15"; delete "IC 13-1-7-21" and insert "IC 16-41-27-17"; delete "IC 13-1-7-12" and insert "IC 16-41-27-10"; delete "IC 13-1-7-13" and insert "IC 16-41-27-11"; delete "IC 13-1-7-14" and insert "IC 16-41-27-12"; delete "IC 13-1-7-26" and insert "IC 16-41-27-22"; delete "IC 13-1-7-20" and insert "IC 16-41-27-16"; and delete "IC 13-1-7-11" and insert "IC 16-41-27-9".

(11) In 410 IAC 6-6-14.1(h), delete "IC 13-1-7" and insert "IC 16-41-27".

Filed with Secretary of State: December 31, 2003, 12:00 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

Notice of Recall

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-184

Under IC 4-22-2-40, LSA Document #03-184, printed at 27 IR 258, is recalled.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-10(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 004. Effective January 9, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 004, Quick Silver".**

SECTION 2. **Pull-tab tickets for pull-tab game number 004 shall sell for fifty cents ($0.50) per ticket.**

SECTION 3. **Pull-tab game number 004 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 004 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 004 shall consist of the following possible play symbols:**

(1) A picture of a coin
COIN
(2) A picture of a stack of coins
CHANGE
(3) A picture of a gold bar
GOLD BAR
(4) A picture of a bell
BELL
(5) A picture of an orange
ORANGE
(6) A picture of a lemon
LEMON
(7) A picture of a bunch of cherries
CHERRIES
(8) A picture of a diamond
DIAMOND
(9) A picture of a horseshoe
HORSESHOE

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 004 which contains three (3) identical play symbols of coins, bells, lemons, or two (2) identical play symbols of change and one (1) picture of either a gold bar or an orange is not a criss-cross winning combination unless all of the following are true:**

(1) The play symbols and play symbol captions in the line are consistent with those specified in SECTION 4 of this document.

(2) The three (3) play symbols and play symbol captions in the line are bisected by a pink arrow.

(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 004 containing a criss-cross winning combination is entitled to a prize, the amount and the approximate number of which are as follows:**

Matching Play Symbol in Criss-Cross Winning Combination	Prize Amount	Approximate Number of Prizes
3 lemons	$.50	362,313
2 change + 1 orange	$1.00	71,568
3 bells	$5.00	17,892
2 change + 1 gold bar	$20.00	8,946
3 coins	$100.00	4,473

SECTION 7. **A total of approximately three million (3,000,000) pull-tab tickets will be initially available for pull-tab game number 004. The odds of winning a prize in pull-tab game 004 are approximately 1 in 6.46. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 004 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab ticket retailer.**

LSA Document #04-10(E)
Filed with Secretary of State: January 8, 2004, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-11(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 005. Effective January 9, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 005, Reel Winnings".**

SECTION 2. **Pull-tab tickets for pull-tab game number 005 shall sell for one dollar ($1) per ticket.**

SECTION 3. **Pull-tab game number 005 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 005 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play**

symbols and play symbol captions in pull-tab game number 005 shall consist of the following possible play symbols:

(1) A picture of a 7
SEVEN
(2) A picture of three bars
BAR-BAR-BAR
(3) A picture of an orange
ORANGE
(4) A picture of a bell
BELL
(5) A picture of a lemon
LEMON
(6) A picture of cherries
CHERRIES
(7) A picture of a plum
PLUM
(8) A picture of a pear
PEAR
(9) A picture of a watermelon
WATERMELON

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 005 which contains three (3) identical play symbols is not a match 3 winning row unless all of the following are true:**

(1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this document.
(2) The three (3) play symbols and play symbol captions in the row are bisected by a red arrow.
(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 005 containing a match 3 winning row is entitled to a prize, the amount and the approximate number of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
3 cherries	$1	268,110
3 lemons	$2	38,727
3 bells	$5	17,874
3 oranges	$20	5,958
3 bar-bar-bar	$50	2,979
3 sevens	$200	2,979

SECTION 7. **A total of approximately two million (2,000,000) pull-tab tickets will be initially available for pull-tab game number 005. The odds of winning a prize in pull-tab game 005 are approximately 1 in 5.95. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 005 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer.**

LSA Document #04-11(E)
Filed with Secretary of State: January 8, 2004, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-12(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 008. Effective January 9, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 008, Luck of the Dice".**

SECTION 2. **Pull-tab tickets for pull-tab game number 008 shall sell for twenty-five cents ($0.25) per ticket.**

SECTION 3. **Pull-tab game number 008 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 008 shall contain nine (9) play symbols and play symbol captions arranged in a matrix of three (3) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 008 shall consist of the following possible play symbols:**

(1) A picture of red dice
RED DICE
(2) A picture of green dice
GREEN DICE
(3) A picture of purple dice
PURPLE DICE
(4) A picture of blue dice
BLUE DICE
(5) A picture of a dice rake
RAKE
(6) A picture of poker chips
CHIPS
(7) A picture of playing cards
CARDS

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 008 which contains three (3) identical play symbols is not a match 3 winning row unless all of the following are true:**

(1) The play symbols and play symbol captions in the row

are consistent with those specified in SECTION 4 of this document.
(2) The three (3) play symbols and play symbol captions in the row are bisected by a red arrow.
(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 008 containing a match 3 winning row is entitled to a prize amount, the approximate number of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
3 blue dice	$0.25	560,616
3 purple dice	$1.00	83,496
3 green dice	$10.00	11,928
3 red dice	$50.00	5,964

SECTION 7. **A total of approximately four million (4,000,000) pull-tab tickets will be initially available for pull-tab game number 008. The odds of winning a prize in pull-tab game 008 are approximately 1 in 6.05. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 008 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab ticket retailer.**

LSA Document #04-12(E)
Filed with Secretary of State: January 8, 2004, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-24(E)

DIGEST

Temporarily adds rules concerning instant game number 681. Effective January 23, 2004.

SECTION 1. **The name of this instant game is "Instant Game Number 681, Lucky Shamrock".**

SECTION 2. **Instant tickets in instant game number 681 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 681 shall contain fourteen (14) play symbols and play symbol captions in the game play data area arranged in pairs of pictures and prize amounts all concealed under a large spot of latex material.**

(b) The play symbols and play symbol captions in instant game number 681, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) A picture of a cane
CANE
(2) A picture of a hat
HAT
(3) A picture of a person's face
FACE
(4) A picture of a pipe
PIPE
(5) A picture of a rabbit's foot
FOOT
(6) A picture of a shoe
SHOE
(7) A picture of a bar of gold
GOLD
(8) A picture of a pot of gold
PTGD
(9) A picture of a horseshoe
HRSE
(10) A picture of a four-leaf clover
WIN

(c) The play symbols and play symbol captions representing prize amounts in instant game number 681 shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $6.00
SIX
(6) $8.00
EIGHT
(7) $10.00
TEN
(8) $70.00
SEVENTY
(9) $200
TWO HUN
(10) $1,000
ONE THOU

SECTION 4. **The holder of a ticket in instant game number 681 shall remove the latex material covering the fourteen (14) play symbols and play symbol captions. If one**

(1) or more play symbols and play symbol captions representing a picture of a four-leaf clover are exposed, the holder is entitled to the paired prize amount. The winning play symbols, prize amounts, and number of winners in instant game number 681 are as follows:

Winning Prize Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	571,200
2 – $1.00	$2	68,000
1 – $2.00	$2	40,800
1 – $4.00	$4	54,400
7 – $1.00	$7	40,800
4 – $2.00	$8	13,600
1 – $8.00	$8	13,600
7 – $2.00	$14	13,600
6 – $1.00 + 1 – $10.00	$16	13,600
4 – $10.00	$40	3,655
5 – $6.00 + 2 – $5.00	$40	3,655
7 – $10.00	$70	680
1 – $70	$70	680
1 – $200	$200	255
1 – $1,000	$1,000	51

SECTION 5. **(a) There shall be approximately four million (4,000,000) instant tickets initially available in instant game number 681.**

(b) The odds of winning a prize in instant game number 681 are approximately 1 in 4.87.

(c) All reorders of tickets for instant game number 681 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 681 is January 31, 2005.**

SECTION 7. **This document expires February 28, 2005.**

LSA Document #04-24(E)
Filed with Secretary of State: January 22, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-25(E)

DIGEST

Temporarily adds rules concerning instant game number 682. Effective January 23, 2004.

SECTION 1. **The name of this instant game is "Instant Game Number 682, Ruby Red 7s".**

SECTION 2. **Instant tickets in instant game number 682 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 682 shall contain twenty (20) play symbols and play symbol captions arranged in pairs of numbers and prize amounts all concealed under a large spot of latex material.**

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) 1
ONE
(2) 2
TWO
(3) 3
THREE
(4) 4
FOUR
(5) 5
FIVE
(6) 6
SIX
(7) 7
RESVN (red seven)
(8) 7
BSEV (black seven)
(9) 8
EIGHT
(10) 9
NINE
(11) 10
TEN
(12) 11
ELEVN
(13) 12
TWLV
(14) 13
THRTN
(15) 14
FORTN
(16) 15
FIFTN
(17) 16
SIXTN
(18) 18
EGTN
(19) 19
NINTN
(20) 20
TWTY

(c) The play symbols and play symbol captions representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $50.00
FIFTY
(9) $100
ONE HUN
(10) $500
FIVE HUN
(11) $1,000
ONE THOU
(12) $15,000
FTN THOU

SECTION 4. **The holder of a ticket in instant game number 682 shall remove the latex material covering the twenty (20) play symbols and play symbol captions. If a play symbol of a black "7" is exposed, the holder is entitled to the paired prize amount. If a play symbol of a red "7" is exposed, the holder is entitled to double the paired prize amount. A holder may win up to ten (10) times on a ticket. The prize amounts and number of winners in instant game number 682 are as follows:**

Winning Prize Play Symbol	Prize Amount	Approximate Number of Winners
1 – $2.00	$2	504,000
1 – $2.00 with red 7	$4	176,400
1 – $4.00	$4	163,800
1 – $2.00 + 1 – $3.00	$5	75,600
1 – $5.00	$5	75,600
10 – $1.00	$10	50,400
2 – $5.00	$10	12,600
1 – $5.00 with red 7	$10	12,600
1 – $10.00	$10	25,200
1 – $5.00 with red 7 + 1 – $5.00	$15	25,200
5 – $3.00	$15	25,200
10 – $2.00	$20	12,600
5 – $4.00	$20	12,600
1 – $5.00 with red 7 + 1 – $10.00	$20	12,600
1 – $20.00	$20	12,600
10 – $5.00	$50	1,848
1 – $10.00 + 1 – $20.00 with red 7	$50	1,848
1 – $50.00	$50	1,680
10 – $10.00	$100	420
1 – $50.00 with red 7	$100	420
2 – $50.00	$100	210
1 – $100	$100	210
5 – $100	$500	25
1 – $500	$500	25
1 – $500 with red 7	$1,000	16
1 – $1,000	$1,000	16
1 – $15,000	$15,000	10

SECTION 5. **(a) There shall be approximately five million (5,000,000) instant tickets initially available in instant game number 682.**

(b) The odds of winning a prize in instant game number 682 are approximately 1 in 4.19.

(c) All reorders of tickets for instant game number 682 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 682 is January 31, 2005.**

SECTION 7. **This document expires February 28, 2005.**

LSA Document #04-25(E)
Filed with Secretary of State: January 22, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-26(E)

DIGEST

Adds 65 IAC 4-338 concerning instant game number 684. Effective January 23, 2004.

65 IAC 4-338

SECTION 1. 65 IAC 4-338 IS ADDED TO READ AS FOLLOWS:

Rule 338. Instant Game 684

65 IAC 4-338-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 684, Island Poker". *(State Lottery Commission; 65 IAC 4-338-1; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1896, eff Jan 23, 2004)*

65 IAC 4-338-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets in instant game number 684 shall sell for seven dollars ($7) per ticket. *(State Lottery Commission; 65 IAC 4-338-2; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1897, eff Jan 23, 2004)*

65 IAC 4-338-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each instant ticket in instant game number 684 shall contain sixty-six (66) play symbols in the game play data area all concealed under a large spot of latex material. The play symbols in the area labeled "YOUR HANDS" shall represent playing cards and be arranged in five (5) rows of five (5) play symbols and play symbol captions each. The rows shall be labeled "1st HAND", "2nd HAND", "3rd HAND", "4th HAND", "5th HAND", "6th HAND", "7th HAND", "8th HAND", "9th HAND", "10th HAND" and "11th HAND", respectively. The play symbols in the area labeled "PRIZE" shall represent prize amounts.

(b) The play symbols and play symbol captions appearing in instant game number 684 shall consist of the following possible play symbols and play symbol captions:

(1) A playing card ♠ with the number 2
TWOSP
(2) A playing card ♠ with the number 3
THRSP
(3) A playing card ♠ with the number 4
FORSP
(4) A playing card ♠ with the number 5
FIVSP
(5) A playing card ♠ with the number 6
SIXSP
(6) A playing card ♠ with the number 7
SVNSP
(7) A playing card ♠ with the number 8
EGTSP
(8) A playing card ♠ with the number 9
NINSP
(9) A playing card ♠ with a letter *[sic., number]* **10**
TENSP
(10) A playing card ♠ with a letter "J"
JACSP
(11) A playing card ♠ with the letter "Q"
QUESP
(12) A playing card ♠ with the letter "K"
KNGSP
(13) A playing card ♠ with the letter "A"
ACESP
(14) A playing card ♣ with the number 2
TWOCL
(15) A playing card ♣ with the number 3
THRCL
(16) A playing card ♣ with the number 4
FORCL
(17) A playing card ♣ with the number 5
FIVCL
(18) A playing card ♣ with the number 6
SIXCL
(19) A playing card ♣ with the number 7
SVNCL
(20) A playing card ♣ with the number 8
EGTCL
(21) A playing card ♣ with the number 9
NINCL
(22) A playing card ♣ with a letter *[sic., number]* **10**
TENCL
(23) A playing card ♣ with a letter "J"
JACCL
(24) A playing card ♣ with the letter "Q"
QUECL
(25) A playing card ♣ with the letter "K"
KNGCL
(26) A playing card ♣ with the letter "A"
ACECL
(27) A playing card ♥ with the number 2
TWOHT
(28) A playing card ♥ with the number 3
THRHT
(29) A playing card ♥ with the number 4
FORHT
(30) A playing card ♥ with the number 5
FIVHT
(31) A playing card ♥ with the number 6
SIXHT
(32) A playing card ♥ with the number 7
SVNHT
(33) A playing card ♥ with the number 8
EGTHT
(34) A playing card ♥ with the number 9
NINHT
(35) A playing card ♥ with a letter *[sic., number]* **10**
TENHT
(36) A playing card ♥ with a letter "J"
JACHT
(37) A playing card ♥ with the letter "Q"
QUEHT
(38) A playing card ♥ with the letter "K"
KNGHT
(39) A playing card ♥ with the letter "A"
ACEHT
(40) A playing card ♦ with the number 2
TWODM

(41) A playing card ♦ with the number 3
THRDM
(42) A playing card ♦ with the number 4
FORDM
(43) A playing card ♦ with the number 5
FIVDM
(44) A playing card ♦ with the number 6
SIXDM
(45) A playing card ♦ with the number 7
SVNDM
(46) A playing card ♦ with the number 8
EGTDM
(47) A playing card ♦ with the number 9
NINDM
(48) A playing card ♦ with a letter *[sic., number]* **10**
TENDM
(49) A playing card ♦ with a letter "J"
JACDM
(50) A playing card ♦ with the letter "Q"
QUEDM
(51) A playing card ♦ with the letter "K"
KNGDM
(52) A playing card ♦ with the letter "A"
ACEDM

(c) The play symbols and play symbol captions representing prize amounts in instant game number 684 shall consist of the following possible play symbols and play symbol captions:

(1) $2.00
TWO
(2) $3.00
THREE
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $7.00
SEVEN
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $70.00
SEVENTY
(11) $100
ONE HUN
(12) $200
TWO HUN
(13) $500
FIVE HUN
(14) $1,000
ONE THOU
(15) $2,000
TWO THOU
(16) $70,000
SVNTY THOU
(17) A picture of an airplane
TRIP

(State Lottery Commission; 65 IAC 4-338-3; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1897, eff Jan 23, 2004)

65 IAC 4-338-4 How to play

Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) The holder of a valid instant ticket in instant game number 684 shall remove the latex material covering the sixty-six (66) play symbols.

(b) Play symbols have the value designated on the face of the play symbols except that those representing jacks, queens, kings, and aces, respectively, shall be treated as having consecutively increasing values. A holder may win multiply *[sic., multiple]* **times on a ticket but may only win one (1) prize in a row.**

(c) If the combination of play symbols in one (1) or more hands meets any of the following requirements, the holder is entitled to the associated prize amount:

(1) 1 Pair - Two (2) play symbols of an identical value of tens (10) or better are exposed.
(2) 2 Pair - Two (2) sets of play symbols are exposed with each set consisting of two (2) play symbols of an identical value.
(3) 3 of a Kind – Three (3) play symbols of an identical value are exposed.
(4) Straight – Five (5) play symbols with consecutively increasing values in any suit are exposed.
(5) Flush – Five (5) play symbols of the same suit are exposed.
(6) Full House – Three (3) play symbols of an identical value and two (2) play symbols of a different identical value are exposed.
(7) 4 of a Kind – Four (4) play symbols of an identical value are exposed.
(8) Straight Flush – Five (5) play symbols of consecutively increasing values in the same suit are exposed.
(9) Royal Flush – Five (5) play symbols representing the 10, Jack, Queen, King, and Ace of the same suit are exposed.
(10) Expose the play symbol of an "AIRPLANE" and automatically win a vacation for six (6) days and five (5) nights for two (2) adults at a selected SuperClub® resort, which shall include the following:
(A) Choice of the following resorts:
(i) Grand Lido Braco, Jamaica.

(ii) Grand Lido Negril, Jamaica.
(iii) Breezes Runaway Bay, Jamaica.
(iv) Breezes Montego Bay, Jamaica. or
(v) Breezes Bahamas, Bahamas.
(B) Round trip coach air transportation from Indianapolis, Chicago, Detroit, or Cincinnati to Montego Bay or Nassau airports.
(C) All-inclusive resort package.
(D) One (1) deluxe leather "ballistic" travel bag. and
(E) All room and airline fees and taxes.
(State Lottery Commission; 65 IAC 4-338-4; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1898, eff Jan 23, 2004)

65 IAC 4-338-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of instant game number 684, "pack" means a set of instant tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-338-5; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1899, eff Jan 23, 2004)*

65 IAC 4-338-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The play symbols, prize amounts, and number of winners in instant game number 684 are as follows:

Number of Winning of *[sic.]* Prizes	Prize Amount	Approximate Number of Winners
1 – $2.00 + 1 – $5.00	$7	93,600
1 – $7.00	$7	93,600
5 – $2.00	$10	31,200
2 – $5.00	$10	31,200
1 – $10.00	$10	15,600
2 – $7.00	$14	15,600
2 – $2.00 + 2 – $5.00	$14	7,800
2 – $2.00 + 1 – $10.00	$14	7,800
5 – $4.00	$20	15,600
4 – $5.00	$20	7,800
2– $10.00	$20	7,800
1 – $20.00	$20	7,800
10 – $3.00 + 1 – $10.00	$40	3,575
4 – $10.00	$40	3,575
2 – $20.00	$40	3,575
1 – $40.00	$40	3,575
10 – $5.00 + 1 – $20.00	$70	9,750
1 – $10.00 + 3 – $20.00	$70	9,750
1 – $20.00 + 1 – $50.00	$70	9,750
1 – $70.00	$70	9,750
10 – $50.00 + 1 – $200	$700	44
2 – $100 + 1 – $500	$700	44
7 – $100	$700	44
2 – $500	$1,000	6
1 – $1,000	$1,000	6
5 – $1,000 + 1 – $2,000	$7,000	5
7 – $1,000	$7,000	5
1 – Airplane symbol	$6,067.82	110
1 – $70,000	$70,000	3

(State Lottery Commission; 65 IAC 4-338-6; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1899, eff Jan 23, 2004)

65 IAC 4-338-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately one million five hundred thousand (1,500,000) instant tickets initially available in instant game number 684.

(b) The odds of winning a prize in instant game number 684 are approximately 1 in 4.01.

(c) All reorders of tickets for instant game number 684 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-338-7; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1899, eff Jan 23, 2004)*

65 IAC 4-338-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 684 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer. *(State Lottery Commission; 65 IAC 4-338-8; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1899, eff Jan 23, 2004)*

LSA Document #04-26(E)
Filed with Secretary of State: January 22, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-27(E)

DIGEST

Temporarily adds rules concerning instant game number 703. Effective January 23, 2004.

SECTION 1. **The name of this instant game is "Instant Game Number 703, Double Doubler".**

SECTION 2. **Instant tickets in instant game number 703 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 703 shall contain seven (7) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Six (6) play symbols and play symbol captions shall be located in the large box located at the right of the tickets. One (1) play symbol and play symbol caption shall be located in the "YOUR PRIZE LEVEL" box. A legend containing two (2) columns labeled "GET" and "WIN", respectively, shall appear on the top right side of each instant ticket and shall set forth winning plays and corresponding prizes.**

(b) The play symbols and play symbol captions in instant game number 703 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $10.00
TEN
(5) $50.00
FIFTY
(6) $100
ONE HUN
(7) $500
FIVE HUN
(8) $1,000
ONE THOU

SECTION 4. **The holder of a ticket in instant game number 703 shall remove the latex material covering the seven (7) play symbols and play symbol captions. If three (3) matching play symbols and play symbol captions are exposed, refer to the "YOUR PRIZE LEVEL" box and the legend to determine what prize level the holder is entitled to claim. The prize amounts and number of winners in instant game number 703 are as follows:**

Matched Play Symbols	Prize Amount	Approximate Number of Winners
3 – $1.00	$1	607,200
3 – $1.00 double	$2	184,000
3 – $2.00	$2	184,000
3 – $2.00 double	$4	36,800
3 – $ 1.00 double doubler	$4	36,800
3 – $5.00	$5	36,800
3 – $2.00 double doubler	$8	18,400
3 – $5.00 double	$10	18,400
3 – $10.00	$10	18,400
3 – $5.00 double doubler	$20	18,400
3 – $10.00 double doubler	$40	9,200
3 – $50.00	$50	782
3 – $50.00 double	$100	138
3 – $100.00	$100	138
3 – $500.00	$500	46
3 – $500.00 double	$1,000	23
3 – $1,000	$1,000	23
3 – $1,000 double doubler	$4,000	12

SECTION 5. **(a) There shall be approximately five million five hundred thousand (5,500,000) instant tickets initially available in instant game number 703.**

(b) The odds of winning a prize in instant game number 703 are approximately 1 in 4.72.

(c) All reorders of tickets for instant game number 703 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 703 is January 31, 2005.**

SECTION 7. **This document expires February 28, 2005.**

LSA Document #04-27(E)
Filed with Secretary of State: January 22, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-28(E)

DIGEST

Adds 65 IAC 4-337 concerning instant game number 710. Effective January 23, 2004.

65 IAC 4-337

SECTION 1. 65 IAC 4-337 IS ADDED TO READ AS FOLLOWS:

Rule 337. Instant Game 710

65 IAC 4-337-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 710, $2,000,000 Bonus Spectacular". *(State Lottery Commission; 65 IAC 4-337-1; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1900, eff Jan 23, 2004)*

65 IAC 4-337-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets for instant game number 710 shall sell for twenty dollars ($20) per ticket. *(State Lottery Commission; 65 IAC 4-337-2; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1901, eff Jan 23, 2004)*

65 IAC 4-337-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each instant ticket in instant game number 710 shall contain forty-eight (48) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Eight (8) play symbols and play symbol captions representing numbers shall appear in the area labeled "WINNING NUMBERS". Forty (40) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers or pictures and prize amounts.

(b) The play symbols and play symbol captions in instant game number 710, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY
(21) 21
TWN
(22) 22
TWT
(23) 23
TWR
(24) 24
TWF
(25) 25
TWV
(26) 26
TWS
(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) 31
THO
(32) 32
THT
(33) 33
TTH
(34) 34
TTF
(35) 35
THF
(36) 36
THS
(37) 37
TTS
(38) 38
THE
(39) 39
THN
(40) 40
FRY
(41) 41
FRO
(42) 42
FRT
(43) 43
FTH

(44) 44
FRF
(45) 45
FRV
(46) 46
FRS
(47) 47
FSN
(48) 48
FRE
(49) 49
FNI
(50) 50
FTY
(51) 51
FYO
(52) 52
FYT
(53) 53
FYH
(54) 54
FYF
(55) 55
FYV
(56) 56
FYS
(57) 57
FYN
(58) 58
FYE
(59) 59
FNN
(60) 60
SXY
(61) A picture of $$
WIN
(62) A picture of GP
WIN

(c) The play symbols and play symbol captions representing prize amounts in instant game number 710 shall consist of the following possible play symbols and play symbol captions:

(1) $5.00
FIVE
(2) $10.00
TEN
(3) $20.00
TWENTY
(4) $25.00
TWY FIVE
(5) $40.00
FORTY
(6) $50.00
FIFTY
(7) $100
ONE HUN
(8) $200
TWO HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $10,000
TEN THOU
(12) $20,000
TWY THOU
(13) $50,000
FTY THOU
(14) $100,000
HUN THOU
(15) $1,000,000
ONE MIL

(State Lottery Commission; 65 IAC 4-337-3; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1901, eff Jan 23, 2004)

65 IAC 4-337-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of an instant ticket for instant game 710 shall remove the latex material covering the forty-eight (48) play symbols and play symbol captions. If any of "YOUR NUMBERS" match any of the "WINNING NUMBERS", the holder is entitled to the paired prize amount. If the play symbol "$$" is exposed in "YOUR NUMBERS", the holder is automatically entitled to the paired prize amount. If the play symbol of "GP" is exposed in "YOUR NUMBERS", the holder is automatically entitled to the grand prize of one million dollars ($1,000,000). The holders of the grand prize winning tickets in instant game 710 shall claim their prize at Hoosier Lottery Headquarters, 201 S. Capitol Avenue, Indianapolis, IN. After claiming the grand prize, the winner will be entered into a "Grand Prize Bonus Drawing" for a chance to win one (1) additional prize of one million dollars ($1,000,000). *(State Lottery Commission; 65 IAC 4-337-4; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1902, eff Jan 23, 2004)*

65 IAC 4-337-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of instant game number 710, "pack" means a set of instant tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-337-5; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1902, eff Jan 23, 2004)*

65 IAC 4-337-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The prize amounts and number of winners in instant game number 710 are as follows:

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
2 – $10.00	$20	288,000
1 – $20.00	$20	288,000
1 – $5.00 + 2 – $10.00	$25	144,000
1 – $25.00	$25	144,000
2 – $5.00 + 3 – $10.00	$40	72,000
4 – $10.00	$40	36,000
1 – $40.00	$40	36,000
10 – $5.00	$50	14,400
6 – $5.00 + 1 – $20.00	$50	14,000
5 – $10.00	$50	14,400
2 – $20.00 + 1 – $10.00	$50	14,400
1 – $50.00	$50	14,400
20 – $5.00	$100	14,400
10 – $10.00	$100	14,400
5 – $20.00	$100	14,400
1 – $10.00 + 2 – $20.00 + 1 – $50.00	$100	14,400
1 – $100	$100	14,400
20 – $10.00	$200	5,580
10 – $20.00	$200	5,580
1 – $10.00 + 2 – $20.00 + 3 – $50.00	$200	5,580
4 – $50.00	$200	5,580
1 – $200	$200	5,580
15 – $20.00 + 4 – $50.00	$500	810
10 – $50.00	$500	810
6 – $50.00 + 2 – $100	$500	810
5 – $100	$500	780
1 – $500	$500	780
20 – $50.00	$1,000	420
10 – $50.00 + 5 – $100	$1,000	420
10 – $100	$1,000	390
5 – $200	$1,000	390
1 – $1,000	$1,000	390
20 – $500	$10,000	100
1 – $10,000	$10,000	100
20 – $1,000	$20,000	50
1 – $20,000	$20,000	50
2 – $50,000	$100,000	5
1 – $100,000	$100,000	5
1 – $1,000,000	$1,000,000	5

(State Lottery Commission; 65 IAC 4-337-6; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1902, eff Jan 23, 2004)

65 IAC 4-337-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) A total of approximately three million six hundred thousand (3,600,000) instant tickets will be initially available for instant game number 710.

(b) The odds of winning a prize with an instant ticket in instant game number 710 are approximately 1 in 3.03.

(c) All reorders of tickets for instant game number 710 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-337-7; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1903, eff Jan 23, 2004)*

65 IAC 4-337-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 710 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer. *(State Lottery Commission; 65 IAC 4-337-8; emergency rule filed Jan 22, 2004, 2:45 p.m.: 27 IR 1903, eff Jan 23, 2004)*

LSA Document #04-28(E)
Filed with Secretary of State: January 22, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-30(E)

DIGEST

Adds 65 IAC 4-339 concerning instant game number 716. Effective January 23, 2004.

65 IAC 4-339

SECTION 1. 65 IAC 4-339 IS ADDED TO READ AS FOLLOWS:

Rule 339. Instant Game 716

65 IAC 4-339-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 716, Red Hot Doubler II". *(State Lottery Commission; 65 IAC 4-339-1; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1903)*

65 IAC 4-339-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets in instant game number 716 shall sell for one dollar ($1) per ticket. *(State Lottery Commission; 65 IAC 4-339-2; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1904)*

65 IAC 4-339-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each instant ticket in instant game number 716 shall contain twelve (12) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Ten (10) play symbols and play symbol captions shall appear in the "YOUR NUMBERS" area representing numbers. One (1) play symbol and play symbol caption representing a number shall appear in the area labeled "LUCKY NUMBER", and one (1) play symbol and play symbol caption representing a prize amount shall appear in *[sic., the]* **area labeled "PRIZE".**

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY

(c) The play symbols representing prize amounts shall consist of the following possible play symbols:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THR
(4) $4.00
FOUR
(5) $6.00
SIX
(6) $8.00
EIGHT
(7) $12.00
TWELVE
(8) $20.00
TWENTY
(9) $40.00
FORTY
(10) $50.00
FIFTY
(11) $80.00
EIGHTY
(12) $100
ONE HUN
(13) $150
ONE FTY
(14) $300
THR HUN
(15) $1,500
FTN HUN
(16) $3,000
THR THOU

(State Lottery Commission; 65 IAC 4-339-3; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1904)

65 IAC 4-339-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of a ticket in instant game number 716 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more play symbols and play symbol captions in the "YOUR NUM-

BERS" area match the play symbol and play symbol caption in the "LUCKY NUMBER" area, the holder is entitled to the prize amount in the "PRIZE" area. If the play symbol and play symbol caption exposed in the "YOUR NUMBERS" area is red, the player is entitled to double the prize amount exposed. *(State Lottery Commission; 65 IAC 4-339-4; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1904)*

65 IAC 4-339-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of instant game number 716, "pack" means a set of instant tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-339-5; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1905)*

65 IAC 4-339-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The number of matches, prize amounts, and number of winners in instant game number 716 are as follows:

Number of Matches and Matched Prize Amounts	Total Prize Amount	Approximate Number of Winners
1 – $1.00	$1	561,000
1 – $2.00	$2	112,200
1 – $3.00	$3	51,000
1 – $4.00	$4	27,200
1 – $2.00 (red)	$4	27,200
1 – $8.00	$8	13,600
1 – $4.00 (red)	$8	13,600
1 – $12.00	$12	10,200
1 – $6.00 (red)	$12	10,200
1 – $20.00	$20	6,800
1 – $40.00	$40	3,247
1 – $20.00 (red)	$40	3,230
1 – $80.00	$80	850
1 – $40.00 (red)	$80	850
1 – $100	$100	527
1 – $50 (red)	$100	510
1 – $300	$300	136
1 – $150 (red)	$300	136
1 – $1,500 (red)	$3,000	12
1 – $3,000	$3,000	12

(State Lottery Commission; 65 IAC 4-339-6; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1905)

65 IAC 4-339-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately four million (4,000,000) instant tickets initially available in instant game number 716.

(b) The odds of winning a prize in instant game number 716 are approximately 1 in 4.84.

(c) All reorders of tickets for instant game number 716 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-339-7; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1905)*

65 IAC 4-339-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 716 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer. *(State Lottery Commission; 65 IAC 4-339-8; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1905)*

LSA Document #04-30(E)
Filed with Secretary of State: January 23, 2004, 1:46 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-31(E)

DIGEST

Adds 65 IAC 4-340 concerning instant game number 718. Effective January 23, 2004.

65 IAC 4-340

SECTION 1. 65 IAC 4-340 IS ADDED TO READ AS FOLLOWS:

Rule 340. Instant Game 718

65 IAC 4-340-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 718, Nifty 50". *(State Lottery Commission; 65 IAC 4-340-1; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1905)*

65 IAC 4-340-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets in instant game number 718 shall sell for one dollar ($1) per ticket. *(State Lottery Commission; 65 IAC 4-340-2; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)*

65 IAC 4-340-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. The play symbols and play symbol captions in instant game number 718 shall consist of the following possible play symbols and play symbol captions:

The play symbols and play symbol captions in instant game number 718 shall consist of the following possible play symbols and play symbol captions: *[sic.]*

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $15.00
FIFTEEN
(5) $50.00
FIFTY
(6) $550
FIV HUN FTY

(State Lottery Commission; 65 IAC 4-340-3; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)

65 IAC 4-340-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of a ticket in instant game number 718 shall remove the latex material covering the ten (10) play symbols and play symbol captions. If three (3) matching play symbols and play symbol captions are exposed, the holder is entitled to a prize of the matched amount. If two (2) matching play symbols and play symbol captions are exposed and match the "Bonus Box" amount, the holder is entitled to a prize of the matched amount. *(State Lottery Commission; 65 IAC 4-340-4; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)*

65 IAC 4-340-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of instant game number 718, "pack" means a set of instant tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-340-5; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)*

65 IAC 4-340-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The prize amounts and number of winners in instant game number 718 are as follows:

Matched Play Symbols	Prize Amount	Approximate Number of Winners
3 – $1.00	$1	638,400
3 – $2.00	$2	268,800
3 – $5.00	$5	117,600
3 – $15.00	$15	16,800
3 – $50.00	$50	18,522
3 – $550	$550	10

(State Lottery Commission; 65 IAC 4-340-6; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)

65 IAC 4-340-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately five million (5,000,000) instant tickets initially available in instant game number 718.

(b) The odds of winning a prize in instant game number 718 are approximately 1 in 4.75.

(c) All reorders of tickets for instant game number 718 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-340-7; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)*

65 IAC 4-340-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 718 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer. *(State Lottery Commission; 65 IAC 4-340-8; emergency rule filed Jan 23, 2004, 1:46 p.m.: 27 IR 1906)*

LSA Document #04-31(E)
Filed with Secretary of State: January 23, 2004, 1:46 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-32(E)

DIGEST

Adds 65 IAC 4-341 concerning instant game number 719. Effective January 23, 2004.

65 IAC 4-341

SECTION 1. 65 IAC 4-341 IS ADDED TO READ AS FOLLOWS:

Rule 341. Instant Game 719

65 IAC 4-341-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 719, Sapphire Blue 7s". *(State Lottery Commission; 65 IAC 4-341-1; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1907)*

65 IAC 4-341-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets in instant game number 719 shall sell for two dollars ($2) per ticket. *(State Lottery Commission; 65 IAC 4-341-2; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1907)*

65 IAC 4-341-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each instant ticket in instant game number 719 shall contain twenty (20) play symbols and play symbol captions arranged in pairs of numbers and prize amounts all concealed under a large spot of latex material. Twenty (20) play symbols and play symbol captions shall appear in a matrix of ten (10) rows and two (2) columns.

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THREE
(4) 4
FOUR
(5) 5
FIVE
(6) 6
SIX
(7) 7
BESVN (blue seven)
(8) 7
BSEV (black seven)
(9) 8
EIGHT
(10) 9
NINE
(11) 10
TEN
(12) 11
ELEVN
(13) 12
TWLV
(14) 13
THRTN
(15) 14
FORTN
(16) 15
FIFTN
(17) 16
SIXTN
(18) 18
EGTN
(19) 19
NINTN
(20) 20
TWTY

(c) The play symbols and play symbol captions representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $2.00
TWO
(2) $3.00
THREE
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $50.00
FIFTY
(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $15,000
FTN THOU

(State Lottery Commission; 65 IAC 4-341-3; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1907)

65 IAC 4-341-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of a ticket in instant game number 719 shall remove the latex material covering the twenty (20) play symbols and play symbol captions. If a play symbol of a black "7" is exposed, the holder is entitled to the paired prize amount shown. If a play symbol of a blue "7" is exposed, the holder is entitled to double the paired prize amount. A holder may win up to ten (10) times on a ticket. *(State Lottery Commission; 65 IAC 4-341-4; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1908)*

65 IAC 4-341-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of instant game number 718, "pack" means a set of instant tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-341-5; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1908)*

65 IAC 4-341-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The prize amounts and number of winners in instant game number 719 are as follows:

Winning Prize Play Symbol	Prize Amount	Approximate Number of Winners
1 – $2.00	$2	360,000
1 – $2.00 with blue 7	$4	126,000
1 – $4.00	$4	126,000
1 – $2.00 + 1 – $3.00	$5	54,000
1 – $5.00	$5	54,000
5 – $2.00	$10	36,000
2 – $5.00	$10	9,000
1 – $5.00 double	$10	9,000
1 – $10.00	$10	18,000
1 – $5.00 + 1 – $5.00 with blue 7	$15	18,000
5 – $3.00	$15	18,000
10 – $2.00	$20	9,000
5 – $4.00	$20	9,000
1 – $5.00 double + 1 – $10.00	$20	9,000
1 – $20.00	$20	9,000
10 – $5.00	$50	1,200
1 – $10.00 + 1 – $20.00 with blue 7	$50	1,200
1 – $50.00	$50	1,200
10 – $10.00	$100	300
1 – $50.00 with blue 7	$100	300
2 – $50.00	$100	150
1 – $100	$100	150
5 – $100	$500	15
1 – $500	$500	14
1 – $500 with blue 7	$1,000	9
1 – $1,000	$1,000	9
1 – $15,000	$15,000	6

(State Lottery Commission; 65 IAC 4-341-6; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1908)

65 IAC 4-341-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately three million six hundred thousand (3,600,000) instant tickets initially available in instant game number 719.

(b) The odds of winning a prize in instant game number 719 are approximately 1 in 4.14.

(c) All reorders of tickets for instant game number 719 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-341-7; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1908)*

65 IAC 4-341-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 710 *[sic., 719]* **within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer.** *(State Lottery Commission; 65 IAC 4-341-8; emergency rule filed Jan 23, 2004, 1:48 p.m.: 27 IR 1908)*

LSA Document #04-32(E)
Filed with Secretary of State: January 23, 2004, 1:48 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-34(E)

DIGEST

Amends 65 IAC 4-1 concerning scratch-off and instant game

definitions and 65 IAC 5-1 concerning draw and on-line game definitions. Effective January 29, 2004.

65 IAC 4-1-6	**65 IAC 5-1-2.4**
65 IAC 4-1-6.5	**65 IAC 5-1-2.6**
65 IAC 4-1-7	**65 IAC 5-1-6**
65 IAC 4-1-12.2	**65 IAC 5-1-7**
65 IAC 4-1-12.3	**65 IAC 5-1-8**
65 IAC 4-1-12.4	**65 IAC 5-1-11.2**
65 IAC 5-1-2.2	**65 IAC 5-1-12**

SECTION 1. 65 IAC 4-1-6 IS AMENDED TO READ AS FOLLOWS:

ARTICLE 4. SCRATCH-OFF GAMES

65 IAC 4-1-6 "Instant game" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. "Instant game" means a ~~lottery game that offers preprinted lottery tickets that, after a covering or a portion thereof is rubbed off, either:~~

~~(1) indicate whether the player has won a prize or entry into a drawing; or~~

~~(2) reveal numbers or play symbols which may be selected in a drawing.~~

scratch-off game. *(State Lottery Commission; 65 IAC 4-1-6; emergency rule filed Oct 2, 1989, 2:10 p.m.: 13 IR 302; emergency rule filed Feb 23, 1994, 4:00 p.m.: 17 IR 1628; emergency rule filed Feb 10, 1997, 4:30 p.m.: 20 IR 1626; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 2. 65 IAC 4-1-6.5 IS AMENDED TO READ AS FOLLOWS:

65 IAC 4-1-6.5 "Instant prize" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6.5. "Instant prize" means a ~~prize which is awarded in connection with an instant game other than a telephone prize and other than a prize awarded pursuant to 65 IAC 4-3-7 or 65 IAC 4-3-10.~~ **scratch-off prize.** *(State Lottery Commission; 65 IAC 4-1-6.5; emergency rule filed Oct 7, 1991, 2:00 p.m.: 15 IR 113; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 3. 65 IAC 4-1-7 IS AMENDED TO READ AS FOLLOWS:

65 IAC 4-1-7 "Instant ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. "Instant ticket" means a ~~lottery ticket in an instant game.~~ **scratch-off ticket.** *(State Lottery Commission; 65 IAC 4-1-7; emergency rule filed Oct 2, 1989, 2:10 p.m.: 13 IR 302; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 4. 65 IAC 4-1-12.2 IS ADDED TO READ AS FOLLOWS:

65 IAC 4-1-12.2 "Scratch-off game" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 12.2. "Scratch-off game" means a lottery game that offers preprinted lottery tickets that, after a covering or a portion thereof is rubbed off, either:

(1) indicate whether the player has won a prize or entry into a drawing; or

(2) reveal numbers or play symbols which may be selected in a drawing.

(State Lottery Commission; 65 IAC 4-1-12.2; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)

SECTION 5. 65 IAC 4-1-12.3 IS ADDED TO READ AS FOLLOWS:

65 IAC 4-1-12.3 "Scratch-off prize" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 12.3. "Scratch-off prize" means a prize which is awarded in connection with a scratch-off game other than a telephone prize and other than a prize awarded pursuant to 65 IAC 4-3-7 or 65 IAC 4-3-10. *(State Lottery Commission; 65 IAC 4-1-12.3; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 6. 65 IAC 4-1-12.4 IS ADDED TO READ AS FOLLOWS:

65 IAC 4-1-12.4 "Scratch-off ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 12.4. "Scratch-off ticket" means a lottery ticket in a scratch-off game. *(State Lottery Commission; 65 IAC 4-1-12.4; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 7. 65 IAC 5-1-2.2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. DRAW GAMES

65 IAC 5-1-2.2 "Draw entry coupon" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2.2. "Draw entry coupon" means a coupon generated by a terminal pursuant to 65 IAC 5-3-7 in connection with

the purchase of an on-line ticket and entitling the owner to entry into a drawing for a grand prize event. *(State Lottery Commission; 65 IAC 5-1-2.2; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1909)*

SECTION 8. 65 IAC 5-1-2.4 IS ADDED TO READ AS FOLLOWS:

65 IAC 5-1-2.4 "Draw game" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2.4. "Draw game" means a lottery game that allows a player to select a combination of numbers or symbols which are recorded on a computer-generated ticket and that selects winners randomly based on such tickets. *(State Lottery Commission; 65 IAC 5-1-2.4; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 9. 65 IAC 5-1-2.6 IS ADDED TO READ AS FOLLOWS:

65 IAC 5-1-2.6 "Draw ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2.6. "Draw ticket" means a lottery ticket in a draw game. *(State Lottery Commission; 65 IAC 5-1-2.6; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 10. 65 IAC 5-1-6 IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-1-6 "On-line entry coupon" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. "On-line entry coupon" means a ~~coupon generated by a terminal pursuant to 65 IAC 5-3-7 in connection with the purchase of an on-line ticket and entitling the owner to entry into a preliminary drawing for a grand prize event.~~ **draw entry coupon.** *(State Lottery Commission; 65 IAC 5-1-6; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1741; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 11. 65 IAC 5-1-7 IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-1-7 "On-line game" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. "On-line game" means a ~~lottery game that allows a player to select a combination of numbers or symbols which are recorded on a computer-generated ticket and that selects winners randomly based on such tickets.~~ **draw game.** *(State Lottery Commission; 65 IAC 5-1-7; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1741; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 12. 65 IAC 5-1-8 IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-1-8 "On-line ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. "On-line ticket" means a lottery ticket in ~~an on-line game.~~ **a draw game.** *(State Lottery Commission; 65 IAC 5-1-8; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1741; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 13. 65 IAC 5-1-11.2 IS ADDED TO READ AS FOLLOWS:

65 IAC 5-1-11.2 "Valid draw ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 11.2. "Valid draw ticket" means a draw ticket which meets all of the validation requirements of 65 IAC 5-2-5. *(State Lottery Commission; 65 IAC 5-1-11.2; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

SECTION 14. 65 IAC 5-1-12 IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-1-12 "Valid on-line ticket" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 12. "Valid on-line ticket" means ~~an on-line ticket which meets all of the validation requirements of 65 IAC 5-2-5.~~ **a valid draw ticket.** *(State Lottery Commission; 65 IAC 5-1-12; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1741 readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jan 29, 2004, 2:00 p.m.: 27 IR 1910)*

LSA Document #04-34(E)
Filed with Secretary of State: January 29, 2004, 2:00 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #04-21(E)

DIGEST

Amends 71 IAC 1.5-1-19 concerning the definition of a breeder for thoroughbreds. Amends 71 IAC 3-2-9 concerning the judge's list. Amends 71 IAC 3-9-4 concerning error in

reported time. Amends 71 IAC 4-3-15 concerning pylons. Amends 71 IAC 5-1-2 and 71 IAC 5.5-1-2 concerning fingerprinting and licensing reciprocity. Amends 71 IAC 5-1-3 and 71 IAC 5.5-1-3 concerning multi-state licensing information. Amends 71 IAC 5.5-3-3 concerning other responsibilities. Amends 71 IAC 5.5-4-2 concerning apprentice jockeys. Amends 71 IAC 6-1-3 concerning claiming procedure. Amends 71 IAC 6-3-1 concerning general provisions. Amends 71 IAC 7-1-11 concerning proof of identity. Amends 71 IAC 7-1-15 concerning horses ineligible to be entered. Amends 71 IAC 7-1-28 concerning qualifying races. Amends 71 IAC 7-2-8 concerning riding in gate, equipment, two tiers. Amends 71 IAC 7-3-11 concerning improper conduct in race. Amends 71 IAC 7-3-13 concerning whip restriction. Amends 71 IAC 7.5-1-2 concerning procedures. Adds 71 IAC 7.5-1-15 concerning no change permitted. Amends 71 IAC 7.5-6-1 concerning equipment. Amends 71 IAC 7.5-7-5 concerning designated races. Amends 71 IAC 8-6-2 concerning prohibited practices. Amends 71 IAC 8-11-3 concerning penalties. Amends 71 IAC 8.5-5-2 concerning prohibited practices. Amends 71 IAC 8.5-11-3 concerning penalties. Amends 71 IAC 13.5-3-1 concerning owner awards. Amends 71 IAC 13.5-3-2 concerning breeder awards. Amends 71 IAC 13.5-3-3 concerning out-of-state breeder's awards. Amends 71 IAC 13.5-3-4 concerning stallion owner awards. Repeals 71 IAC 7-1-22. Effective January 21, 2004.

71 IAC 1.5-1-19
71 IAC 3-2-9
71 IAC 3-9-4
71 IAC 4-3-15
71 IAC 5-1-2
71 IAC 5-1-3
71 IAC 5.5-1-2
71 IAC 5.5-1-3
71 IAC 5.5-3-3
71 IAC 5.5-4-2
71 IAC 6-1-3
71 IAC 6-3-1
71 IAC 7-1-11
71 IAC 7-1-15
71 IAC 7-1-22
71 IAC 7-1-28
71 IAC 7-2-8
71 IAC 7-3-11
71 IAC 7-3-13
71 IAC 7.5-1-2
71 IAC 7.5-1-15
71 IAC 7.5-6-1
71 IAC 7.5-7-5
71 IAC 8-6-2
71 IAC 8-11-3
71 IAC 8.5-5-2
71 IAC 8.5-11-3
71 IAC 13.5-3-1
71 IAC 13.5-3-2
71 IAC 13.5-3-3
71 IAC 13.5-3-4

SECTION 1. 71 IAC 1.5-1-19 IS AMENDED TO READ AS FOLLOWS:

71 IAC 1.5-1-19 "Breeder" defined
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 19. "Breeder" means the owner of the horse's dam at the time of foaling for thoroughbreds. **In the case of thoroughbreds, the commission will recognize the breeder as the person designated as such on the Jockey Club's Certificate for a particular horse.** For quarter horses, appaloosas, arabians, and paint horses, "breeder" means the owner of the dam at the time of service. *(Indiana Horse Racing Commission; 71 IAC 1.5-1-19; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2816, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1911)*

SECTION 2. 71 IAC 3-2-9 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-2-9 Judge's list
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 9. (a) The judges shall maintain a judge's list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health and safety of the participants and for the protection of the wagering public. The reasons for a horse to be placed on the judge's list and ordered to qualify shall include, but not be limited to, the following on a fast or good track:

(1) Making a break in a qualifying race.

(2) Making a break in a race following a qualifying race unless finishing 1st, 2nd, or 3rd. Two (2) year old nonwagering purse races for three hundred dollars ($300) or less shall be considered a qualifying race.

(3) Poor performance or failure to go in a qualifying time following a qualifying race.

(4) Poor performance in a qualifying race regardless of going in qualifying time.

(5) Failing to go in qualifying time in two (2) consecutive starts.

(6) Failure to go in qualifying time previous or subsequent to a break line.

~~(6)~~ **(7)** Making breaks in two (2) consecutive starts unless finishing 1st, 2nd, or 3rd in one (1) of the two (2).

~~(7)~~ **(8)** Being scratched sick or lame in two (2) consecutive programmings or scratched sick or lame from a race following a qualifying race.

~~(8)~~ **(9)** Scratched sick or lame, having failed to go in qualifying time in a previous or subsequent start to that scratch.

~~(9)~~ **(10)** Scratched ~~sick or lame~~ **sick/lame** in a race previous or subsequent to a break line.

~~(10)~~ **(11)** Numerous bad lines in its last six (6) starts regardless of being consecutive on finishing 1st, 2nd, or 3rd.

(b) (1) A horse showing a satisfactory line in one (1) of its last two (2) starts or its last start at a pari-mutuel track prior to racing at ~~a~~ **an Indiana** county fair **half mile** track, the **aforementioned** county fair lines will not be considered towards its eligibility to return to the pari-mutuel track. Notwithstanding the above satisfactory line, at the pari-mutuel track, must be within its last six (6) programmed lines but within thirty (30) days of the pari-mutuel start (race date to race date).

(2) A horse having not raced at a pari-mutuel track must show

a satisfactory charted line in one (1) of its last two (2) county fair starts within the time standards set.

(c) The judges may place a horse on the judge's list when there exists a question as to the exact identification, ownership, or trainer of a horse.

(d) A horse may not be released from the judge's list without permission of the judges. *(Indiana Horse Racing Commission; 71 IAC 3-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1129; emergency rule filed Apr 9, 1998, 1:18 p.m.: 21 IR 3377; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2534; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1911)*

SECTION 3. 71 IAC 3-9-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-9-4 Error in reported time
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. ~~(a)~~ In circumstances involving ~~an error in timing,~~ **a malfunction of the electronic timer,** no time shall be ~~announced, posted, or~~ recorded for ~~that heat.~~

~~(b) In any case of alleged error regarding~~ a ~~horse's official time, the time in question shall not be changed to favor the horse or its owner, except upon the sworn statement of the judges and official timers who officiated in the~~ race **unless the judges can verify the correct time with the aid of the official timer and/or track video equipment.** *(Indiana Horse Racing Commission; 71 IAC 3-9-4; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1132; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1912)*

SECTION 4. 71 IAC 4-3-15 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-3-15 Pylons
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 15. (a) If, at a race track which has pylon demarcations, a horse or the horse's sulky leaves the course by brushing, running over, and/or going inside of the pylons, that horse may be penalized by a disqualification if: ~~in the opinion of the judges, the action:~~

(1) **it** gave the horse an unfair advantage over other horses in the race;

(2) **it** helped the horse improve its position in the race; ~~and~~ **or**

(3) ~~drivers going~~ **the driver goes** inside the pylons and **does** not immediately ~~correcting their~~ **correct** position.

(b) Horses using the inside to pass must have complete clearance of the pylons.

(c) Drivers striking pylons but not gaining an unfair advantage may be fined.

(d) When an act of interference causes a horse or part of the horse's sulky to be in violation of these rules and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered. *(Indiana Horse Racing Commission; 71 IAC 4-3-15; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3125, eff May 26, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2098; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1912)*

SECTION 5. 71 IAC 5-1-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5-1-2 Fingerprinting and licensing reciprocity
Authority: IC 4-31-6-2
Affected: IC 4-31-6-8

Sec. 2. (a) The commission may license persons holding valid permanent (not temporary) licenses issued by ARCI member racing jurisdictions in North America. Prior to being licensed, the person must:

(1) be in good standing;

(2) have cleared a Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) fingerprint check within the previous five (5) years;

(3) file an application or affidavit as may be required by the commission; and

(4) pay the required applicable fees.

(b) The commission may recognize the issuance of racing licenses from ARCI member jurisdictions in North America **or the National Racing Compact** for purposes of issuance of licenses in this jurisdiction.

(c) Only permanent licenses in good standing shall be considered. Temporary or probationary licenses shall not be considered.

(d) Applicants must be in good standing in each jurisdiction where they hold or have held a racing license.

(e) Provided the above requirements have been met, the commission may issue either a license or a validation sticker. The validation sticker shall be affixed to either a license issued by this jurisdiction or a valid license issued by another ARCI member jurisdiction. The validation sticker shall measure a maximum of one-half (½) inch vertically, be one and one-half

(1½) inches horizontally, and shall contain:

(1) this jurisdiction's two **(2)** letter postal service abbreviation;

(2) the year of validation; and

(3) the audit trail code or serial number (where applicable).

The validation sticker shall be constructed of an approved tamper-resistant material. The affixing of the validation sticker shall constitute licensing. The commission shall determine the period of time that such license shall be valid in this jurisdiction.

(f) In the event the licensee is absent from this jurisdiction, and upon payment of the applicable fees, a receipt shall be mailed to the licensee's permanent address. The receipt may then be presented at the commission office so that a commission representative may affix the proper validation sticker to the racing license badge.

(g) Notwithstanding a person's purported eligibility for fingerprint reciprocity, the commission or its designee may require the fingerprinting of any applicant or licensee. *(Indiana Horse Racing Commission; 71 IAC 5-1-2; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1140; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2399; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1912)*

SECTION 6. 71 IAC 5-1-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5-1-3 Multi-state licensing information

Authority: IC 4-31-6-2
Affected: IC 4-31

Sec. 3. In lieu of a license application from this jurisdiction, the commission may accept an ARCI Multi-State License and Information Form **and the National Racing Compact form and license.** *(Indiana Horse Racing Commission; 71 IAC 5-1-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1140; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1913)*

SECTION 7. 71 IAC 5.5-1-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-1-2 Fingerprinting and licensing reciprocity

Authority: IC 4-31-6-2
Affected: IC 4-31-6-8

Sec. 2. (a) The commission may license persons holding valid permanent (not temporary) licenses issued by ARCI member racing jurisdictions in North America. Prior to being licensed, the person must:

(1) be in good standing;

(2) have cleared a Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) fingerprint check within the previous five (5) years;

(3) file an application or affidavit as may be required by the commission; and

(4) pay the required applicable fees.

(b) The commission may recognize the issuance of racing licenses from ARCI member jurisdictions in North America **or the National Racing Compact** for purposes of issuance of licenses in this jurisdiction.

(c) Only permanent licenses in good standing shall be considered. Temporary or probationary licenses shall not be considered.

(d) Applicants must be in good standing in each jurisdiction where they hold or have held a racing license.

(e) Provided the above requirements have been met, the commission may issue either a license or a validation sticker. The validation sticker shall be affixed to either a license issued by this jurisdiction or a valid license issued by another ARCI member jurisdiction. The validation sticker shall measure a maximum of one-half (½) inch vertically, be one and one-half (1½) inches horizontally, and shall contain:

(1) this jurisdiction's two **(2)** letter postal service abbreviation;

(2) the year of validation; and

(3) the audit trail code or serial number (where applicable).

The validation sticker shall be constructed of an approved tamper-resistant material. The affixing of the validation sticker shall constitute licensing. The commission shall determine the period of time that such license shall be valid in this jurisdiction.

(f) In the event the licensee is absent from this jurisdiction, and upon payment of the applicable fees, a receipt shall be mailed to the licensee's permanent address. The receipt may then be presented at the commission office so that a commission representative may affix the proper validation sticker to the racing license badge.

(g) Notwithstanding a person's purported eligibility for fingerprint reciprocity, the commission or its designee may require the fingerprinting of any applicant or licensee. *(Indiana Horse Racing Commission; 71 IAC 5.5-1-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2849, eff Jul 1, 1995; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1140; emergency rule filed Feb 13, 1998 10:00 a.m.: 21 IR 2416; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1913)*

SECTION 8. 71 IAC 5.5-1-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-1-3 Multi-state licensing information

Authority: IC 4-31-6-2
Affected: IC 4-31

Sec. 3. In lieu of a license application from this jurisdiction,

the commission may accept an ARCI Multi-State License and Information Form **and the National Racing Compact form and license.** *(Indiana Horse Racing Commission; 71 IAC 5.5-1-3; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2850, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1913)*

SECTION 9. 71 IAC 5.5-3-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-3-3 Other responsibilities
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) A trainer is responsible for the following:
(1) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms, and other areas which have been assigned by the association.
(2) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.
(3) Ensuring that fire prevention rules are strictly observed in the assigned stable area.
(4) Providing a list to the commission of the trainer's employees on association grounds and any other area under the jurisdiction of the commission. The list shall include each employee's:
(A) name;
(B) occupation;
(C) Social Security number; and
(D) occupational license number.
The commission shall be notified by the trainer, in writing, within twenty-four (24) hours of any change.
(5) The proper identity, custody, care, health, condition, and safety of horses in his or her charge.
(6) Disclosure of the true and entire ownership of each horse in his or her care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the stewards and recorded by the racing secretary.
(7) Training all horses owned wholly or in part by him or her which are participating at the race meeting.
(8) Registering with the racing secretary each horse in his or her charge within twenty-four (24) hours of the horse's arrival on association grounds.
(9) Ensuring that, at the time of arrival at a licensed race track, each horse in his or her care is accompanied by a valid health certificate, which shall be filed with the racing secretary.
(10) Having each horse in his or her care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary.
(11) Using the services of those veterinarians licensed by the commission to attend horses that are on association grounds.
(12) Immediately reporting the alteration of the sex of a horse in his or her care to the horse identifier and the racing secretary, whose once *[sic.]* shall note such alteration on the certificate of registration.
(13) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior designated neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration.
(14) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in his or her charge.
(15) Promptly reporting the death of any horse in his or her care on association grounds to the stewards and the commission veterinarian and compliance with 71 IAC 8.5 governing postmortem examinations.
(16) Maintaining a knowledge of the medication record and status of all horses in his or her care.
(17) Immediately reporting to the stewards and the commission veterinarian if he or she knows, or has cause to believe, that a horse in his or her custody, care, or control has received any prohibited drugs or medication.
(18) Representing an owner in making entries and scratches and in all other matters pertaining to racing.
(19) Horses entered as to eligibility.
(20) Ensuring the fitness of a horse to perform creditably.
(21) Ensuring that his or her horses are properly shod, bandaged, and equipped.
(22) Presenting his or her horse in the paddock at the appointed time before the race in which the horse is entered.
(23) Personally attending to his or her horses in the paddock unless excused by the stewards.
(24) Instructing the jockey to give his or her best effort during a race and that each horse shall be ridden to win.
(25) Attending the collection of a urine or blood sample from the horse in his or her charge or delegating a licensed employee or the owner of the horse to do so.
(26) Promptly notifying the owner of a horse of a positive test performed on his or her horse indicating levels in violation of 71 IAC 8.5.
(27) Notifying horse owners upon the revocation or suspension of his or her trainer's license.
(28) Guard and protect all horses in his/her care.
(29) Account for fees and services rendered on behalf of any horse in his/her care to the appropriate owner or owners.
(30) Determine the training regimen of all horses in his/her care.
~~(31) Reporting at time of entry if his or her horse will be racing with a nasal strip.~~
~~(32)~~ **(31)** The licensure of owners and employees prior to participating on race day.

(b) Upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer such horses may be entered to race.

(c) No trainer shall assign any of his/her duties or responsibil-

ity to any person that is disqualified or ineligible to participate in racing or is not appropriately licensed.

(d) No trainer shall assume any of the above responsibilities for a horse not under his/her active care, custody, and supervision.

(e) No trainer shall practice his profession, except under his own name. *(Indiana Horse Racing Commission; 71 IAC 5.5-3-3; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2856, eff Jul 1, 1995; emergency rule filed June 8, 1999, 9:30 a.m.: 22 IR 3121, eff May 26, 1999 [NOTE: IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-107(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2778; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1914)*

SECTION 10. 71 IAC 5.5-4-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-4-2 Apprentice jockeys
Authority: IC 4-31-6-2
Affected: IC 4-31

Sec. 2. (a) An applicant may be prohibited from riding until the stewards or the commission have *[sic., has]* sufficient opportunity ~~(not to exceed fourteen (14) days)~~ to verify the applicant's previous riding experience.

(b) The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing do *[sic., does]* not apply to the conditions of an apprentice jockey license.

(c) An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

(d) An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person shall not receive more than one (1) apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued.

(e) An apprentice jockey shall ride with a five (5) pound weight allowance beginning with the apprentice jockey's first mount and for one (1) full year from the date of the apprentice jockey's fifth winning mount. If after riding one (1) year from the date of the apprentice jockey's fifth winning mount, the apprentice jockey has failed to ride a total of forty (40) winners from the date of the apprentice jockey's first winning mount, the apprentice jockey shall continue to ride with a five (5) pound weight allowance for one (1) more year from the date of the apprentice jockey's fifth winning mount or until the apprentice jockey has ridden forty (40) winners, whichever comes first.

(f) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more after the date of the apprentice jockey's fifth winning mount because of service in national armed forces, enrollment in an institution of secondary or higher education, or because of physical disablement, the commission may extend the time during which the apprentice weight allowance may be claimed for a period not to exceed the period the apprentice jockey was unable to ride. The apprentice jockey extension form approved by the commission shall be completed and provided to the commission. The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced on the approved form documentation verifying time lost as defined by this regulation. An apprentice may petition one (1) of the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

(g) The conditions set forth in section 1 of this rule shall also apply. *(Indiana Horse Racing Commission; 71 IAC 5.5-4-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2857, eff Jul 1, 1995; emergency rule filed Jun 22, 1998, 5:09 p.m.: 21 IR 4233; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1915)*

SECTION 11. 71 IAC 6-1-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 6-1-3 Claiming procedure
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) A person desiring to claim a horse must have the required amount of money on deposit with the horsemen's bookkeeper or clerk of course at the time the completed claim form is deposited.

(b) The claimant shall provide all information required on the claim form provided by the association.

(c) The claim form shall be completed and signed by the claimant **or his authorized agent** prior to placing it **and the necessary transfer fees** in an envelope provided for this purpose by the association and approved by the commission. The claimant shall seal the envelope and identify on the outside the date, race number, and track name only.

(d) The envelope shall be delivered to the designated area or licensed delegate at least thirty (30) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received.

(e) The claim shall be examined by the judges prior to the start of the race. The association's designee shall be prepared to state whether sufficient funds are on deposit in the amount equivalent to the specified claiming price and any other required

fees and taxes. No official shall give any information on claims filed until after the race.

(f) It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim box to the judges' stand.

(g) The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

(h) Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of:

(1) a photostatic copy of the check presented;

(2) written detailed information to include:

(A) the name of the claimant;

(B) the bank;

(C) the branch;

(D) the account number; and

(E) the drawer of any checks; or

(3) details of any other method of payment.

This documentation is to be kept on file at race tracks for twelve (12) months and is to be produced to the commission for inspection at any time during the twelve (12) month period.

(i) When a claim has been submitted, it is irrevocable and is at the risk of the claimant.

(j) In the event more than one (1) claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

(k) Upon determining that a claim is valid, the judges shall notify the paddock judge of:

(1) the name of the horse claimed;

(2) the name of the claimant; and

(3) the name of the person to whom the horse is to be delivered.

Also, the judges shall cause a public announcement to be made.

(l) Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, sound or unsound, or injured during or after the race.

(m) A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation.

(n) Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

(o) A claimed horse shall not:

(1) be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed;

(2) remain in or be returned to the same stable or to the care or management of the first owner or trainer; or

(3) be sold or transferred to anyone;

for a period of thirty (30) days unless reclaimed out of another claiming race.

(p) The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration has been received by the racing secretary for transfer to the new owner.

(q) The judges, at the option of the claimant, shall rule a claim invalid if the horse has been found ineligible to the race from which it was claimed.

(r) Mares and fillies who are in foal are ineligible for claiming races. Upon receipt of the horse, if a claimant determines within forty-eight (48) hours that a claimed filly or mare is in foal, he or she may, at his or her option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

(s) If a claimant demonstrates that the sex of the horse is other than reported in the official racing program, he or she may, within forty-eight (48) hours of the claim, at his or her option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed. The judge shall rule the claim of the returned horse invalid.

(t) When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

(1) the amount of the claiming price and any other required fees and taxes shall be repaid to the claimant;

(2) any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

(3) the claimant shall be responsible for any reasonable costs incurred through the care, training, or racing of the horse while it was in his or her possession.

(u) No horse claimed out of a claiming race shall race outside

the state of Indiana for the earlier to occur of:

(1) a period of thirty (30) days; or

(2) the conclusion of the race meeting from which it was claimed;

without the permission of the judges. *(Indiana Horse Racing Commission; 71 IAC 6-1-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1149; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2907; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2400; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2101; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1915)*

SECTION 12. 71 IAC 6-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 6-3-1 General provisions

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) For the purpose of this rule, overnight events shall include:

(1) conditioned;
(2) claiming;
(3) preferred;
(4) invitational;
(5) handicap;
(6) open;
(7) free-for-all;
(8) schooling; or
(9) matinee races;

or a combination thereof.

(b) At extended meetings, condition sheets must be available to participants at least twenty-four (24) hours prior to closing declarations to any race program contained therein. At other meetings, conditions must be posted and available to participants at least eighteen (18) hours prior to closing declarations.

(c) A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

(d) Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

(e) Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing or may be divided and carried over to a subsequent racing program subject to the following:

(1) No such divisions shall be used in the place of regularly scheduled races which fill.

(2) Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied unless the conditions provide for divisions based upon age, performance, earnings, or sex.

(3) Where necessary to fill a card, not more than one (1) race per day may be divided into not more than two (2) divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings, or sex.

(f) Amateur races shall not be used as pari-mutuel betting events. *(Indiana Horse Racing Commission; 71 IAC 6-3-1; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2908; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1917)*

SECTION 13. 71 IAC 7-1-11 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-11 Proof of identity

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 11. (a) No horse may start in any race unless it is fully identified. The burden of proving identity rests with the person or persons having charge of the horse at the meeting, and the judges may suspend and refer to the commission such persons in case of fraud or attempted fraud. The judges also may suspend and refer to the commission any other person who aids in any way in the perpetration of a fraud or who participates in any attempt at fraud.

(b) No horse shall be allowed to race in a race or in a qualifying race unless it has been lip-tattooed or freeze brand recognized by the USTA.

(c) No horse shall be allowed to race in a pari-mutuel event or a qualifying race unless its lip tattoo and/or freeze brand and markings are recognized and identified to the satisfaction of the Indiana horse racing commission licensed identifier. *(Indiana Horse Racing Commission; 71 IAC 7-1-11; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1152; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2863, eff Jul 1, 1995; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2404; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1917)*

SECTION 14. 71 IAC 7-1-15 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-15 Horses ineligible to be entered

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 15. (a) An owner or trainer shall not enter or start a horse that:

(1) has not been qualified or is on the judge's or vet's list;

(2) is wearing a trachea tube or has a hole in its throat for a trachea tube;
(3) has been nerved; or
(4) has impaired eyesight in both eyes.

(b) A horse drawn into a race that is on the judge's or vet's list shall be scratched.

(c) A horse shall not start at an Indiana pari-mutuel track in a wagering or nonwagering event having not raced in the last thirty (30) days, race date to race date. *(Indiana Horse Racing Commission; 71 IAC 7-1-15; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1153; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2383; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1917)*

SECTION 15. 71 IAC 7-1-28 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-28 Qualifying races
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 28. Declarations for qualifying races shall be governed by the following:
(1) A horse that has not raced previously at the gait chosen must go a qualifying race under the supervision of the judges and acquire at least one (1) charted line within the qualifying standards of the track.
(2) A horse that does not show a charted line within its last six (6) starts must go a qualifying race within the time standards of the track.
(3) A horse ~~that does~~ not ~~meet the time~~ **meeting** qualifying standards in ~~one (1) of~~ its last two (2) **consecutive** starts **on a good or fast track** must qualify.
(4) Horses racing with or without **pacing or trotting** hopples for the first time must qualify.
(5) When a horse is used for the sole purpose of qualifying a driver, that horse must go in qualifying time or be placed on the list to requalify, and the race must be charted.
(6) If a horse takes a win record in a qualifying race, that record must be prefaced with a "Q". The record will not be considered official unless the horse is post-race tested (urine and blood).
(7) The judges may permit free-for-all or invitational class horses to go a timed workout consistent with the time it will race in competition in place of a qualifying race.
(8) If a qualified horse is entered in a qualifier, that qualifier will not be considered if the horse fails to qualify. Only one (1) such failed qualifier will be permitted.
(Indiana Horse Racing Commission; 71 IAC 7-1-28; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1155; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2406; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2536; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2383; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1918)

SECTION 16. 71 IAC 7-2-8 IS AMENDED TO READ AS FOLLOWS:

Rule 2. Starter and the Start of the Race

71 IAC 7-2-8 Riding in gate; equipment; two tiers
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 8. (a) No persons shall be allowed to ride in the starting gate except the starter and his or her driver or operator and a patrol judge unless permission has been granted by the commission.

(b) Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

~~(c) Horses may be held on the backstretch not to exceed two (2) minutes awaiting post time, except when delayed by an emergency.~~

~~(d)~~ **(c)** In the event there are two (2) tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier. Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the first tier so long as he or she does not thereby interfere with another trailing horse or deprive another trailing horse of a drawn position. *(Indiana Horse Racing Commission; 71 IAC 7-2-8; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1159; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1918)*

SECTION 17. 71 IAC 7-3-11 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-11 Improper conduct in race
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 11. **(a)** Loud shouting or other improper conduct is forbidden in a race. Unless otherwise provided in this rule, drivers shall keep both feet in the stirrups at all times while on the track and during a race.

(b) Drivers are not allowed to lay back in the sulky, and handholds are to be adjusted accordingly.

(c) Drivers laying back in the sulky taking racing room away from a trailing horse may be considered an act of

interference. *(Indiana Horse Racing Commission; 71 IAC 7-3-11; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1162; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1918)*

SECTION 18. 71 IAC 7-3-13 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-13 Whip restriction
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 13. (a) Drivers will be allowed whips not to exceed three (3) feet, nine (9) inches, plus a snapper not longer than six (6) inches.

(b) The whip, including the snapper, may make contact only above and between the shafts.

(c) The whip hand shall not pass behind the shoulder.

(d) Drivers are not allowed to lay back in the sulky to gain more leverage with the whip.

~~(c)~~ **(e)** Provided further that the following actions may be considered as excessive or indiscriminate use of the whip:
(1) Causing visible injury, including bleeding and/or welts.
(2) Whipping a horse after a race.
(3) Whipping a horse that is exhausted or not in contention.
~~(4) Allowing the whip hand to pass behind the shoulder.~~
~~(5)~~ **(4)** Excessive use of the whip.

~~(d)~~ **(f)** Drivers shall keep a line in each hand from the start of the race until the top of the homestretch finishing the race. *(Indiana Horse Racing Commission; 71 IAC 7-3-13; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1162; emergency rule filed Feb 13, 1998, 10:00 a.m.:21 IR 2409; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3132, eff May 26, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2537; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919)*

SECTION 19. 71 IAC 7.5-1-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-1-2 Procedures
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one (1) year.

(b) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer, or a licensed designee of the owner or trainer.

(c) Races printed in the condition book shall have preference over substitute and extra races **except for brought back Indiana extra races.**

(d) An entry must be in writing, by telephone, or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(e) The person making an entry shall clearly designate the horse so entered.

(f) No horse may be entered in more than one (1) race (with the exception of stakes races) to be run on the same day on which pari-mutuel wagering is conducted.

(g) Any permitted medication or approved change of equipment must be declared at time of entry. *(Indiana Horse Racing Commission; 71 IAC 7.5-1-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2865, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919)*

SECTION 20. 71 IAC 7.5-1-15 IS ADDED TO READ AS FOLLOWS:

71 IAC 7.5-1-15 No change permitted
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 15. (a) The conditions for eligibility to a race may not be changed once entries are taken except that an error may be corrected with the consent of the stewards.

(b) No change in trainers of a horse, entered and drawn to start, will be permitted. In the event of such change, the horse will be scratched and the parties responsible therefore shall be subject to fine or suspension. A change in ownership may be permitted with the approval of the stewards.

(c) No owner shall list as the trainer of a horse a person who is not in fact the trainer of such horse, and no trainer shall allow his or her name to be shown on the declaration form nor the official program as trainer of a horse which he or she does not in fact have under his or her care and supervision as trainer of the horse. The stewards may require proof that a person listed as the trainer of a horse is in fact the actual trainer of that horse. *(Indiana Horse Racing Commission; 71 IAC 7.5-1-15; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919)*

SECTION 21. 71 IAC 7.5-6-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-6-1 Equipment

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) No whip shall be used unless it has affixed to the end of it a looped leather popper not less than one and one-quarter (13) *[sic.]* inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of leather feathers, each feather not less than one (1) inch in length. No whip shall exceed thirty-one (31) inches in length. All whips are subject to inspection and approval by the stewards.

(b) No bridle shall exceed two (2) pounds.

(c) A horse's tongue may be tied down with clean bandages, gauze, or a tongue strap.

(d) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter.

(e) The use of Gelocast and/or like materials as a racing bandage or the use of Gelocast and/or like materials in conjunction with traditional materials to form a racing bandage is prohibited.

(f) Any nontraditional material incorporated into a racing bandage must be approved by the commission veterinarian.

(g) Blinker cups must be a minimum of one and one-half (1½) inches. *(Indiana Horse Racing Commission; 71 IAC 7.5-6-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2870, eff Jul 1, 1995; emergency rule filed Jun 22, 1998, 5:13 p.m.: 21 IR 4234; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2781; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2384; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919)*

SECTION 22. 71 IAC 7.5-7-5 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-7-5 Designated races
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 5. (a) In the event a penalty for a riding violation is ten (10) days or less, the jockey may compete in a designated race or races provided the jockey must be named at the time of entry.

(b) For the purpose of this section, a designated race shall mean any stakes, futurity, or futurity trial in any state.

(c) Official rulings for riding infractions of ten (10) days or less shall state: "The term of this suspension shall not prohibit participation in designated races.".

(d) On a day in which a jockey participates in a designated race or races, this day will not count as a suspension day. *(Indiana Horse Racing Commission; 71 IAC 7.5-7-5; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2892; emergency rule filed Jun 8, 1999, 9:30 a.m.: 22 IR 3123, eff May 26, 1999 [NOTE: IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-107(E) was filed with the secretary of state June 8, 1999.]; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1920)*

SECTION 23. 71 IAC 8-6-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8-6-2 Prohibited practices
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) The possession and/or use of a drug, substance, or medication, specified below, on the premises of a facility under the jurisdiction of the commission is prohibited. These drugs or substances include those which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:
(1) Erythropoietin.
(2) Darbepoietin.
(3) Oxyglobin.
(4) Hemopure.

(b) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States is prohibited.

(c) The practice, administration, or application of a treatment, procedure, therapy, or method identified below, which is performed on the premises of a facility under jurisdiction of the commission or in any horse scheduled to compete in a race under the jurisdiction of the commission and which may endanger the health and welfare of the horse or endanger the safety of the rider or driver, or the use of which may adversely affect the integrity of racing is prohibited: Intermittent hypoxic treatment by external device. *(Indiana Horse Racing Commission; 71 IAC 8-6-2; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1920)*

SECTION 24. 71 IAC 8-11-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8-11-3 Penalties
Authority: IC 4-31-3-9
Affected: IC 4-31-8-4; IC 4-31-13

Sec. 3. (a) A person whose breath test shows a reading of

more than five-hundredths of one percent (0.05%) by weight of alcohol in the person's breath or blood shall be summarily suspended under the rules of the commission and subject to any other sanction available to the commission pursuant to the provisions of IC 4-31-13.

(b) The judges may relieve a licensee, **except an owner, owner/trainer, or trainer,** of any duties for that day should that person show a reading between one-hundredths *[sic.]* of one percent (0.01%) and five-hundredths of one percent (0.05%) by weight of alcohol in a person's blood.

(c) The permit holder's security department shall immediately inform the judges of any reading of one-hundreths *[sic., one-hundredth]* of one percent (0.01%) or and *[sic.]* above. *(Indiana Horse Racing Commission; 71 IAC 8-11-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1177; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2082; emergency rule filed Feb 24, 2000, 2:32 p.m.:23 IR 1671, eff Feb 24, 2000; errata filed Mar 13, 2000, 7:36 a.m.: 23 IR 1656; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2538; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1920)*

SECTION 25. 71 IAC 8.5-5-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-5-2 Prohibited practices
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) The possession and/or use of a drug, substance, or medication, specified below, on the premises of a facility under the jurisdiction of the commission is prohibited. These drugs or substances include those which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:

(1) Erythropoietin.
(2) Darbepoietin.
(3) Oxyglobin.
(4) Hemopure.

(b) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States is prohibited.

(c) The practice, administration, or application of a treatment, procedure, therapy, or method identified below, which is performed on the premises of a facility under jurisdiction of the commission or in any horse scheduled to compete in a race under the jurisdiction of the commission and which may endanger the health and welfare of the horse or endanger the safety of the rider or driver, or the use of which may adversely affect the integrity of racing is prohibited: Intermittent hypoxic treatment by external device. *(Indiana Horse Racing Commission; 71 IAC 8.5-5-2; emergency rule filed Aug 20, 2002, 3:00 p.m.: 26 IR 57; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2386; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1921)*

SECTION 26. 71 IAC 8.5-11-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-11-3 Penalties
Authority: IC 4-31-3-9
Affected: IC 4-31-8-4; IC 4-31-13

Sec. 3. **(a)** A person whose breath test shows a reading of more than five-hundredths of one percent (0.05%) by weight of alcohol in the person's breath or blood ~~is~~ **shall be summarily suspended under the rules of the commission and** subject to ~~the following sanctions:~~

~~(1) A jockey shall not be permitted to ride and shall be suspended under the rules of the commission.~~

~~(2) A steward, a starter, or an assistant starter shall be relieved of all duties for that program, and a report shall be made to the commission for appropriate action.~~

~~(3) Any other licensee shall be suspended, beginning that day, under the rules of the commission.~~

~~(4)~~ any other sanction available to the commission pursuant to the provisions of IC 4-31-13.

(b) The stewards may relieve a licensee, except an owner, owner/trainer, or trainer, of any duties for that day should that person show a reading between one-hundredths *[sic.]* **of one percent (0.01%) and five-hundredths of one percent (0.05%) by weight of alcohol in a person's blood.**

(c) The permit holder's security department shall immediately inform the stewards of any reading of one-hundredths *[sic.]* **of one percent (0.01%) or and** *[sic.]* **above.** *(Indiana Horse Racing Commission; 71 IAC 8.5-11-3; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2888, eff Jul 1, 1995; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2894; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2785; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1921)*

SECTION 27. 71 IAC 13.5-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 13.5-3-1 Owner awards
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. An owner award is the award paid to the owner of a registered Indiana bred which wins any race at a licensed parimutuel track located in Indiana. The amount of the award is:

(1) ~~twenty-five~~ **twenty** percent ~~(25%)~~ **(20%)** of the ~~gross~~

base purse for all allowance and stakes (including Maiden Special Weights); and

(2) fifteen percent (15%) of the ~~gross~~ **base** purse for all claiming races ~~except~~ when entered for a claiming price of ~~less~~ **greater** than **seven thousand** five ~~thousand~~ **hundred** dollars ~~($5,000).~~ **($7,500).**

Awards will be paid by the commission. Owner awards shall be limited to a single race award not to exceed ten thousand dollars ($10,000). *(Indiana Horse Racing Commission 71 IAC 13.5-3-1; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2786; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1921)*

SECTION 28. 71 IAC 13.5-3-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 13.5-3-2 Breeder awards
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. A breeder award means the award is paid to the breeder of a registered Indiana bred which wins any race at a licensed pari-mutuel track located in Indiana. The amount of the award is twenty percent (20%) of the ~~gross~~ **base** purse for all stake, allowance (including Maiden Special Weight), and claiming races ~~except~~ when entered for a claiming price of ~~less~~ **greater** than **seven thousand** five ~~thousand~~ **hundred** dollars ~~($5,000).~~ **($7,500).** Awards will be paid by the commission. Breeder awards shall be limited to a single race award not to exceed ten thousand dollars ($10,000). *(Indiana Horse Racing Commission; 71 IAC 13.5-3-2; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2787; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1922)*

SECTION 29. 71 IAC 13.5-3-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 13.5-3-3 Out-of-state breeder's awards
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. An out-of-state breeder's award is the award paid to the breeder of a registered Indiana bred which wins a race in another state or Canada. The amount of the award is ten percent (10%) of the winner's share of the purse for any race ~~except~~ when entered for a claiming price of ~~less~~ **greater** than **seven thousand** five ~~thousand~~ **hundred** dollars ~~($5,000).~~ **($7,500).** This award is applicable only when there is no live thoroughbred race meet in progress in Indiana (except for stake races). Awards will be paid by the commission. Out-of-state breeder's awards shall be limited to a single race award not to exceed ten thousand dollars ($10,000). *(Indiana Horse Racing Commission; 71 IAC 13.5-3-3; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2787; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 28, 2003, 2:20 p.m.: 26 IR 1952; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1922)*

SECTION 30. 71 IAC 13.5-3-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 13.5-3-4 Stallion owner awards
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. A stallion owner award is the award is paid to the owner or lessee of a registered Indiana stallion whose registered progeny have won any race at a licensed pari-mutuel track located in Indiana. The amount of the award is five percent (5%) of the ~~gross~~ **base** purse for all stake, allowance, and claiming races ~~except~~ when entered for a claiming price of ~~less~~ **greater** than **seven thousand** five ~~thousand~~ **hundred** dollars ~~($5,000).~~ **($7,500).** Awards will be paid by the commission. Stallion awards shall be limited to a single race award not to exceed ten thousand dollars ($10,000). The award will be paid to the owner or lessee of the registered stallion at time of conception. The stallion must have been registered at time of conception. *(Indiana Horse Racing Commission; 71 IAC 13.5-3-4; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2787; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1922)*

SECTION 31. 71 IAC 7-1-22 IS REPEALED.

LSA Document #04-21(E)
Filed with Secretary of State: January 21, 2004, 2:30 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-20(E)

DIGEST

Temporarily amends 312 IAC 9-4-5, which governs annual seasons, bag limits, hunting restrictions, and shooting hours for taking geese, to establish provisions in spring 2004 for taking lesser snow geese and Ross's geese in support of a federal effort to control the numbers of these mid-continent light geese (MCLG). Effective February 1, 2004.

SECTION 1. **In addition to licensing requirements under IC 14-22-7, IC 14-22-11-1, 50 CFR 20, and 50 CFR 21, a person must obtain a permit issued by the department to take a lesser snow goose (Anser caerulescens caerulescens) or a Ross's goose (Anser rossii) from February 1, 2004, through March 31, 2004. A person taking a goose under this SECTION is exempted from the requirements under 312 IAC 9-4-2 to register for and possess an identification number through the Harvest Information Program.**

SECTION 2. **SECTION 1 of this document expires April 1, 2004.**

LSA Document #04-20(E)
Filed with Secretary of State: January 15, 2004, 11:45 a.m.

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #04-38(E)

DIGEST

Temporarily amends provisions at 327 IAC 5-4-3 and adds provisions at 327 IAC 15-15. Authority: IC 4-22-2-37.1(a)(14). Effective February 6, 2004. Expires May 6, 2004.

SECTION 1. (327 IAC 5-4-3) (a) Concentrated animal feeding operations are point sources ~~subject to the~~ **that require** NPDES ~~permit program~~ **permits for discharges or potential discharges. Once an operation is defined as a CAFO under this SECTION, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under this document.**

(b) **The following** definitions **apply throughout this rule** *[document]***:**

(1) "Animal confinement area" means the areas of the facility where animals are housed. It includes, but is not limited to, the following areas:

(A) Open lots.
(B) Housed lots.
(C) Feedlots.
(D) Confinement houses.
(E) Stall barns.
(F) Free stall barns.
(G) Milk rooms.
(H) Milking center.
(I) Cowyards.
(J) Barnyards.
(K) Medication pens.
(L) Walkers.
(M) Animal walkways.
(N) Stables.

~~(1)~~ **(2)** "Animal feeding operation" **or "AFO"** means **the following:**

(A) A lot or facility where the following conditions are met:

~~(A)~~ **(i)** Animals, other than aquatic animals, **that** have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any **twelve** (12) month period. ~~and~~

~~(B)~~ **(ii)** Crops, vegetation, forage growth, or post-harvest residues **that** are not sustained in the normal growing season over any portion of the lot or facility.

(B) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article *[327 IAC 5]*, ~~(327 IAC 5),~~ to be a single animal feeding operation if ~~they~~ **the operations** adjoin each other or if ~~they~~ **the operations** use a common area or system for the disposal of wastes.

~~(2)~~ **(3)** "Concentrated animal feeding operation" **or "CAFO"** means an ~~animal feeding operation which meets the criteria set forth in clause (A) or (B) or which is designated~~ **AFO that is one (1) of the following:**

(A) A large CAFO.
(B) A medium CAFO.
(C) Designated as a CAFO by the commissioner under subsection (c).

~~(A) More than the numbers of animals specified in any of the following categories are confined:~~

~~(i) one thousand (1,000) slaughter and feeder cattle;~~
~~(ii) seven hundred (700) mature dairy cattle (whether milked or dry cows);~~
~~(iii) two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);~~
~~(iv) five hundred (500) horses;~~
~~(v) ten thousand (10,000) sheep or lambs;~~
~~(vi) fifty-five thousand (55,000) turkeys;~~
~~(vii) one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);~~
~~(viii) thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);~~
~~(ix) five thousand (5,000) ducks; or~~
~~(x) one thousand (1,000) animal units; or~~

~~(B)(i) Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly from the facility into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and~~

~~(ii) More than the following numbers of animals are confined in any of the following categories:~~

~~(AA) three hundred (300) slaughter or feeder cattle;~~
~~(BB) two hundred (200) mature dairy cattle (whether milked or dry cows);~~
~~(CC) seven hundred fifty (750) swine, each weighing over 25 kilograms;~~
~~(DD) one hundred fifty (150) horses;~~

~~(EE) three thousand (3,000) sheep or lamb;~~
~~(FF) sixteen thousand five hundred (16,500) turkeys;~~
~~(GG) thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);~~
~~(HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);~~
~~(II) one thousand five hundred (1,500) ducks; or~~
~~(JJ) three hundred (300) animal units.~~

~~(3) "Animal unit" means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

~~(4) "Manmade" means constructed by man and used for the purpose of transporting wastes.~~

Two (2) or more AFOs under common ownership that are considered to be a single AFO for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for disposal of wastes.

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(5) "Land application area" means land under the control of an AFO owner or operator, whether the land is owned, rented, leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(6) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the number specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.

(B) One thousand (1,000) veal calves.

(C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.

(D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.

(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.

(F) Five hundred (500) horses.

(G) Ten thousand (10,000) sheep or lambs.

(H) Fifty-five thousand (55,000) turkeys.

(I) Thirty thousand (30,000) hens or broilers if the AFO uses a liquid manure handling system.

(J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.

(K) Eighty-two thousand (82,000) laying hens if the AFO uses other than a liquid manure handling system.

(L) Thirty thousand (30,000) ducks if the AFO uses other than a liquid manure handling system for ducks.

(M) Five thousand (5,000) ducks if the AFO uses a liquid manure handling system for ducks.

(7) "Liquid manure handling system for ducks" means any waste collection or storage system that involves the use of ponds for animal confinement and that collects waste generated by ducks or contaminated storm water from the production area.

(8) "Manure" means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:

(A) Lagoons.

(B) Run-off ponds.

(C) Storage sheds.

(D) Stockpiles.

(E) Under house or pit storages.

(F) Liquid impoundments.

(G) Static piles.

(H) Composting piles.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means:

(A) any AFO that stables or confines the type and number of animals that fall within any of the following ranges and has been defined or designated as a CAFO:

(i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cattle, whether milked or dry.

(ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.

(iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.

(iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.

(v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.

(vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.

(vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.

(viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.

(ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers if the AFO uses a liquid manure handling system.

(x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.

(xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens if the AFO uses other than a liquid manure handling system.

(xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks if the AFO uses other than a liquid manure handling system for ducks.

(xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks if the AFO uses a liquid manure handling system for ducks; and

(B) one (1) of these conditions are met:

(i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.

(ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.

(iii) Direct contact swimming, washing, or spray cooling of animals.

(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(13) "Production area" means that part of an AFO that includes the following:

(A) The animal confinement areas.

(B) The manure storage areas.

(C) The raw materials storage areas.

(D) The waste containment areas.

(E) Egg washing or processing facility.

(F) Any area used in the storage, handling, treatment, or disposal of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of concentrated animal feeding operations **requirements are as follows:**

(1) Notwithstanding any other provision of this SECTION, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of ~~pollution~~ **pollutants** to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the animal feeding operation and the amount of wastes reaching waters of the state.

(B) The location of the animal feeding operation relative to waters of the state.

(C) The means of conveyance of ~~animal wastes~~ **manure** and process wastewaters into waters of the state.

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, **manure,** and process wastewaters into waters of the state. ~~and~~

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No animal feeding operation with less than the numbers of animals set forth in subsection ~~(b)~~ **(b)(6)** shall be designated as a concentrated animal feeding operation unless:

(A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(B) pollutants are discharged directly into waters of the state ~~which~~ **that** originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with SECTION 14 of this document.

SECTION 2. **The purpose of this document is to establish an NPDES general permit for CAFOs. In addition to the requirements of 327 IAC 15 for all general permits, this document establishes the requirements for CAFOs in Indiana.**

SECTION 3. **The definitions contained in IC 13-11-2, 327 IAC 5-1.5, SECTION 1 of this document, and 327 IAC 15-1-2 apply throughout this document. In addition to those definitions, the following definitions** *[sic.]* **apply throughout this document: "NRCS 590 standard" means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001.**

SECTION 4. **(a) This rule** *[document]* **applies to all CAFOs or AFOs designated as CAFOs, under SECTION 1(c) of this document, located within the permit boundary set forth in SECTION 7 of this document. All CAFO owners or operators must seek coverage under this document or through an individual NPDES permit, except as provided in subsection (d).**

(b) Any owner or operator covered by this document can request to be excluded from coverage under this general permit document by applying for and obtaining an individual NPDES permit.

(c) A person excluded from the general permit rule solely because the person has a valid existing individual NPDES permit may request coverage under the general permit rule and may request revocation of the existing individual NPDES permit pursuant to 327 IAC 15-2-3.

(d) The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of land application of the manure, litter, or process wastewater to land areas under its control is a discharge from the CAFO subject to NPDES permit requirements except in the event of an agricultural storm water discharge. A precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge provided the manure, litter, or wastewater has been applied in accordance with site-specific nutrient management practices and the requirements of this document.

SECTION 5. **(a) An owner or operator of:**

(1) a proposed CAFO;

(2) an AFO or CFO that has an increase in the number of animals as a result of construction such that it becomes a CAFO; or

(3) an existing CAFO that would otherwise be required to obtain an approval amendment under 327 IAC 16-6-1(c);

that seeks coverage under this rule *[document]* **must submit an NOI that meets the requirements of SECTION 9 of this document.**

(b) The NOI must also contain all the information required under 32 IAC 16-7-2 and the operation must comply with the design and construction requirements of 327 IAC 16-5 and 16-8 *[327 IAC 16-8]***.**

(c) A CAFO subject to this SECTION may not begin construction until the department provides written notification that the NOI contains all required information and is complete. In accordance with IC 13-18-10-2.2, a permittee must begin construction within two (2) years and complete construction within four (4) years of receiving approval to construct.

(d) The owner or operator shall notify the department prior to commencement of construction on a new waste management system or structure.

(e) Within thirty (30) days of completion of construction of a waste management system or structure, and prior to the introduction of animals into the newly constructed system or structure, the owner or operator shall submit an affidavit to the commissioner certifying that the system or structure was constructed and will be operated in accordance with this document. The owner or operator shall also submit the as-built plans, if changed from what was originally submitted, for the waste management system or structure with the affidavit.

(f) An owner or operator that meets the requirements of this SECTION satisfies the requirement to obtain a construction approval under 327 IAC 16.

SECTION 6. **(a) An owner or operator that submits an NOI to construct on land that is undeveloped or for which a valid existing CFO approval or NPDES permit has not been issued shall make a reasonable effort to provide notice to:**

(1) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or

(2) all occupants of the land, if a person who owns land that adjoins the land which the confined feeding operation is to be located does not occupy the land; and

(3) the county commissioners of the county in which the confined feeding operation is to be located;

not more than ten (10) working days after submitting the NOI. The notice must be sent by mail, be in writing, include the date on which the NOI was submitted to the department, and include a brief description of the subject of the NOI. The applicant shall pay the cost of complying with this SECTION. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this SECTION.

(b) Upon notification by the department that an individual permit is required, the owner of *[sic.]* **operator shall comply with subsection (a) in regards to notice of the individual NPDES permit application.**

(c) For all first time submissions of NOIs, including

operations subject to subsection (a), the department shall publish a notice in the newspaper with the largest circulation in the county after receiving an initial NOI. The notice will request comments be submitted to the department on the eligibility of the owner or operator submitting the NOI for a general permit.

(d) An owner or operator proposing to construct or modify a CAFO, such that the operation will maintain more than twenty (20) times any of the animal numbers listed at 327 IAC 1-2-5, shall meet the requirements of subsection (a) and be subject to the requirements of 327 IAC 16-7-13 regarding public notice.

(e) The department shall provide notice of receipt of an NOI for a CAFO subject to subsection (d) to:
(1) the owner or operator in writing; and
(2) the public through notice in a newspaper as required by subsection (c).

SECTION 7. **All CAFOs, or AFOs designated as CAFOs under SECTION 1(c) of this document or 40 CFR 122.23(c), within the boundaries of the state are regulated by this document.**

SECTION 8. **(a) Qualifying for this general permit document constitutes an approval under IC 13-18-10.**

(b) A CAFO that has a general permit is not required to obtain or renew the CFO approval under 327 IAC 16-7-3 and 327 IAC 16-7-4 in order to operate.

SECTION 9. **(a) The owner or operator of a CAFO shall submit a notice of intent (NOI) to be covered by this document, on a form supplied by the commissioner, to the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section.**

(b) The NOI shall include the following:
(1) Name, telephone number, and mailing address of the owner and operator.
(2) Facility name and location address. Contact person and telephone number.
(3) Type and number of animals at the facility.
(4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
(5) Total number of acres under control of the applicant available for land application.
(6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
(7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
(8) A topographic map of the facility.
(9) Payment of application fee of fifty dollars ($50).
(10) SIC code for the facility.

(c) The NOI must be signed by:
(1) the owner or operator of the facility for which the NOI is submitted; or
(2) a person described under 327 IAC 15-4-3(g).

(d) Following submittal of the NOI to IDEM, IDEM shall do the following:
(1) Review the NOI for completeness and applicability under this document.
(2) Consider comments received on whether a facility meets the eligibility requirements for a general permit.
(3) Determine if the facility is eligible for a general permit under this document or will be required to obtain an individual NPDES permit under 327 IAC 5.
(4) Request additional information, if needed.
(5) Notify the facility, within ninety (90) days of receipt of the NOI, that the applicant:
(A) qualifies for the general permit under this document;
(B) does not qualify for the general permit under this document; or
(C) must submit an individual NPDES permit application.

(e) In accordance with 40 CFR 122.28(b), any interested person may petition the commissioner to require a person subject to this document to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI submission requirements under this document may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI under this SECTION or apply for an individual NPDES permit under 327 IAC 5. The new owner must submit the NOI at least thirty (30) days prior to beginning operation at the transferred facility.

(g) A determination under this SECTION is appealable under IC 4-21.5.

SECTION 10. **(a) The following are required to submit a NOI on or before April 13, 2006:**
(1) CAFOs with one thousand (1,000) or more cow/calf pairs.
(2) CAFOs with one thousand (1,000) or more veal calves.
(3) CAFOs with ten thousand (10,000) or more swine weighing less than fifty-five (55) pounds.
(4) CAFOs with one hundred twenty-five thousand (125,000) or more chickens other than laying hens and if the operation uses other than a liquid manure handling system.
(5) CAFOs with eighty-two thousand (82,000) or more laying hens if the operation uses other than a liquid manure handling system.

(6) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOS prior to that date because the operation discharged, is discharging, or will discharge only in the event of a twenty-five (25) year, twenty-four (24) hour storm.

These CAFOs must maintain a CFO approval under 327 IAC 16 until the NOI is submitted to comply with this document.

(b) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date because the operation has not discharged, does not discharge, and will not discharge except in the event of a twenty-five (25) year, twenty-four (24) hour storm must certify to the commissioner in writing within ninety (90) days of the effective date of this document that the AFO was not required to apply for a permit under 327 IAC 5 and that a discharge has not occurred from the operation and the operation was constructed and is at all times being maintained to preclude discharge during dry weather and wet weather up to and including the twenty-five (25) year, twenty-four (24) hour storm. The certification shall be signed in accordance with 327 IAC 15-4-3(g). Any operation that has a discharge after certifying to the commissioner under this subsection shall submit a NOI within thirty (30) days after the discharge.

(c) The owner or operator of any existing CAFO, except those listed in subsection (a), or timely certifying under subsection (b), shall submit a NOI within ninety (90) days of the effective date of this document.

(d) Operations designated as a CAFO in accordance with SECTION 1(c) of this document or 40 CFR 122.23(c) must submit a NOI no later than ninety (90) days after receiving the notice of designation.

SECTION 11. **(a) In addition to the conditions set forth in this document, the conditions for a NPDES general permit under the following apply:**

(1) 327 IAC 15-1-1 Purpose.
(2) 327 IAC 15-1-2 Definitions.
(3) 327 IAC 15-1-3 Department Request for Data.
(4) 327 IAC 15-1-4 Enforcement.
(5) 327 IAC 15-2-1 Purpose and Scope.
(6) 327 IAC 15-2-3 NPDES General Permit Rule Applicability Requirements.
(7) 327 IAC 15-2-4 Administrative Requirement for NPDES General Permits.
(8) 327 IAC 15-2-5 Notice of Intent Letter.
(9) 327 IAC 15-2-6 Exclusions.
(10) 327 IAC 15-2-7 Effect of General Permit Rule.
(11) 327 IAC 15-2-8 Nontransferability of Notification Requirements; Time Limits for Individual NPDES Permit Applications.
(12) 327 IAC 15-2-9 Special Requirements for NPDES General Permit Rule.
(13) 327 IAC 15-2-10 Prohibitions.
(14) 327 IAC 15-4-1, excluding subsections (h) and (m), General Conditions.
(15) 327 IAC 15-4-3 Reporting Requirements.

(b) The permittee must comply with 327 IAC 16-9 through 327 IAC 16-12.

(c) This permit does not constitute a new or amended permit under 327 IAC 16-10-3(f)(2).

(d) Animals may not have direct access to waters of the state.

(e) Disposal of dead animals must be handled under rules of the board of animal health at 345 IAC 7-7-3.

SECTION 12. **The following are specific permit conditions that apply to all CAFO NPDES general permits. Permit holders must:**

(1) Obtain approval under 327 IAC 16-7-1(b) for any change in design or construction under 327 IAC 16-8 and 327 IAC 16-9-1.
(2) Comply with NRCS 590 Standard* by December 31, 2006, unless the commissioner has approved an alternative method to minimize the potential for nutrients to be transported or to migrate. This approval is based on satisfying the intent of the NRCS 590 Standard*.
(3) Submit an annual report to the commissioner by February fifteenth of each year for the previous calender *[sic.]* **year with the following information:**
(A) Number and type of animals, whether in open confinement or housed under roof.
(B) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.
(C) Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.
(D) Total number of acres for land application.
(E) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months.
(F) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.
(4) Develop soil conservation practice plan for land application areas within one (1) year after the effective date of this document and implement the plan within three (3) years after the effective date of this document.

Developing and implementing a CNMP within the time frame specified in this subdivision satisfies this requirement. Any land:

(A) not owned or controlled by the CAFO to which manure is applied; and

(B) where the land owner does not implement conservation practices;

must be used in accordance with 327 IAC 16-10-3 through 327 IAC 16-10-5.

(5) Conduct manure testing for nitrogen and phosphorus annually.

(6) Land application of liquid manure on snow-covered or frozen ground is prohibited unless done in accordance with a plan approved by the commissioner. The plan must demonstrate to the commissioner that land application under such conditions will not lead to run-off and discharge to waters of the state. The plan may include information about slope, barriers between the land application area and waters of the state, method of application, other conservation practices to be used, or any other information that would demonstrate that the potential to discharge pollutants to waters of the state is minimized. Permittees may not land apply under such conditions until receiving approval of the plan by the commissioner.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204 or on-line at http://www.nrcs.usda.gov/technical/ECS/nutrient/590.html.**

SECTION 13. **(a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this document, in accordance with 327 IAC 15-4-1(l).**

(b) The conditions of this document are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30.

SECTION 14. **(a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:**

(1) The potential for discharges from the production area.

(2) The potential for discharges from any land application area.

(3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this SECTION.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all NOI information required under SECTION 9 of this document. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of a NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

(1) A brief description of the type of facility or activity requesting the determination.

(2) A brief summary of the factual basis, upon which the request was based, for granting the determination.

(3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator must seek coverage under a permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a determination under this SECTION but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain permit authorization prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a determination under this SECTION if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge.

SECTION 15. **(a) Coverage under this document is granted by the commissioner for a period of five (5) years from the date coverage commences.**

(b) Coverage commences on the date that a timely and complete NOI is submitted to the department.

(c) To obtain renewal of coverage under this general permit document, the information required under SECTION 9 of this document shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this document unless the commissioner determines that a later date is acceptable.

(d) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

(1) the owner or operator fails to submit the permit application; or

(2) the individual permit is issued or denied by the commissioner.

SECTION 16. **(a) CAFOs subject to this document are required to meet the effluent limitations contained in 40 CFR 412*.**

(b) Compliance with general and specific permit conditions as required by SECTIONS 11 and 12 of this document constitutes compliance with a nutrient management plan and implementation of best management practices as detailed in 40 CFR 412.4.

(c) Any discharges under this document are required to meet water quality standards under 327 IAC 5.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

SECTION 17. **This document expires May 6, 2004.**

LSA Document #04-38(E)
Filed with Secretary of State: February 6, 2004, 10:45 a.m.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-29(E)

DIGEST

Temporarily amends matters incorporated by reference in 345 IAC 9-2.1-1 to facilitate prevention of and surveillance for bovine spongiform encephalopathy (BSE), including prohibiting the slaughter of nonambulatory cattle for human food, prohibiting meat and meat products from nonambulatory cattle to be distributed for food, prohibiting the distribution of carcasses and parts of BSE positive animals, declaring certain animal parts specified risk materials, amending rules governing products produced using advanced meat recovery technology, prohibiting air-injection stunning of cattle, and further regulating or prohibiting the use of mechanically separated meat in human food.. Temporarily adds rules that require carcasses from animals tested for BSE be held until test results are obtained. Authority: IC 15-2.1-18-21. Effective January 23, 2004.

SECTION 1. (a) The board adopts as its rule and incorporates by reference the following federal regulations in effect on January 1, ~~2002.~~ **2004, and as amended in 69 FR 1862 through 69 FR 1891, January 12, 2004:**

(1) 9 CFR 301, except the definitions in IC 15-2.1 and 345 IAC 9-1-3 shall control over conflicting definitions in 9 CFR.

(2) 9 CFR 303 through 9 CFR 311, except the following are not incorporated:

(A) 9 CFR 303.1(c), 9 CFR 303.1(g), and 9 CFR 303.2.

(B) 9 CFR 306.1.

(C) 9 CFR 307.4, 9 CFR 307.5, and 9 CFR 307.6.

(D) 9 CFR 308.

(3) 9 CFR 313 through 9 CFR 320, except 9 CFR 317.4 and 9 CFR 317.5.

(4) 9 CFR 325.

(5) 9 CFR 416.

(6) 9 CFR 417.

(7) 9 CFR 500, except the following:

(A) References to the Uniform Rules of Practice, 7 CFR Subtitle A, Part 1, Subpart H shall mean IC 15-2.1-19 and IC 4-21.5-3.

(B) References to adulterated or misbranded product shall refer to products adulterated or misbranded as defined in ~~IC 15-2.1-24.~~ **IC 15-2.1-2.**

(b) When interpreting this article, including all matters incorporated by reference, the following shall apply:

(1) A reference to any subpart of 9 CFR 302 refers to the corresponding section of 345 IAC 9-2.

(2) A reference to:

(A) 9 CFR 307.4 shall refer to 345 IAC 9-7-4;

(B) 9 CFR 307.5 shall refer to 345 IAC 9-7-6; and

(C) 9 CFR 307.6 shall refer to 345 IAC 9-7-6.

(3) A reference to any subpart of 9 CFR 312 refers to the corresponding section of 345 IAC 9-12.

(4) A reference to:

(A) 9 CFR 316.16 shall refer to 345 IAC 9-16-16;

(B) 9 CFR 317.4 shall refer to 345 IAC 9-17-4;

(C) 9 CFR 317.5 shall refer to 345 IAC 9-17-5; and

(D) 9 CFR 317.16 shall refer to 345 IAC 9-17-16.

(5) A reference to:

(A) 9 CFR 321.1 shall refer to 345 IAC 9-20; and

(B) 9 CFR 321.2 shall refer to 345 IAC 9-20.

(6) A reference to any subpart of 9 CFR 329 shall refer to the corresponding section in 345 IAC 9-22.

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

SECTION 2. **The following apply to the carcass and parts of carcasses of an animal that is tested for bovine spongiform encephalopathy (BSE):**

(1) In an official establishment, carcass and parts thereof shall be retained until such time as the BSE test results are received and a board representative releases the carcass and parts. If the animal tests negative for BSE, the carcass and parts thereof may be passed if the carcass and parts otherwise qualify to be passed. If the animal tests positive for BSE, the carcasses and parts shall be condemned as adulterated and held for disposition in a manner approved by the state veterinarian.

(2) In a custom exempt establishment, carcass and parts thereof shall be retained until such time as the BSE test results are received and a board representative releases the carcass and parts. If the animal tests negative for BSE, the carcass and parts may be released. If the animal tests positive for BSE, the carcasses and parts shall be condemned as adulterated and held for disposition in a manner approved by the state veterinarian.

SECTION 3. **SECTIONS 1 and 2 of this document expire on the earliest of the following:**

(1) The date that another temporary rule adopted under IC 15-2.1-18-21 supercedes this document.

(2) The date that permanent rules adopted under IC 4-22-2 supercede this document.

(3) April 22, 2004.

LSA Document #04-29(E)
Filed with Secretary of State: January 23, 2004, 10:56 a.m.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-33(E)

DIGEST

Temporarily amends 872 IAC 1-1 concerning changes to facilitate the computerization of the Uniform CPA examination based on P.L.6-2003 (House Enrolled Act 1183). Authority: P.L.6-2003 (HEA 1183), SECTION 8. Effective January 26, 2004.

SECTION 1. (872 IAC 1-1-2) Applications must be made on forms authorized by the board. Reproductions will not be accepted. The forms include detailed instructions ~~which,~~ **that,** if followed, should furnish the board or the board's designee with sufficient information to enable it to pass upon the ~~applicant's~~ **candidate's** eligibility for examination or **the applicant's eligibility for** registration. The board or the board's designee may require ~~applicants~~ **candidates** to provide photographs, certified transcripts of education achievement, and other relevant data.

~~Examinations are ordinarily held in May and November of each year; and applications for the May examination, complete in all respects, must be filed by the preceding March 1, and the applications for the November examination, complete in all respects, must be filed by the preceding September 1.~~

SECTION 2. (872 IAC 1-1-6.2) ~~An applicant~~ **A candidate** is considered as graduating from an accredited educational institution if, at the time the educational institution grants the ~~applicant's~~ **candidate's** degree, it is accredited as outlined in sections 6.1 and 6.3 of this rule *[872 IAC 1-1-6.1 and 872 IAC 1-1-6.3]*.

SECTION 3. (872 IAC 1-1-6.4) A graduate of a four (4) year degree-granting college or university not accredited at the time the ~~applicant's~~ **candidate's** degree was received or at the time the application was filed will be deemed to be a graduate of an accredited educational institution if:

(1) the ~~applicant's~~ **candidate's** degree is equivalent to a degree from an accredited educational institution, as defined in section 6.3 of this rule *[872 IAC 1-1-6.3]*, and that fact is certified by a credentials certification service;

(2) an accredited institution defined in section 6.3 of this rule *[872 IAC 1-1-6.3]* accepts the ~~applicant's~~ **candidate's** nonaccredited baccalaureate degree for admission to a graduate business degree program; or

(3) the:

(A) ~~applicant~~ **candidate** satisfactorily completes at least fifteen (15) semester hours, or the equivalent, in postbaccalaureate education at the accredited educational institution, of which at least nine (9) semester hours, or the equivalent, shall be in accounting; and

(B) accredited educational institution certifies that the ~~applicant~~ **candidate** is in good standing for the continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

SECTION 4. (872 IAC 1-1-6.5) If an educational institution was not accredited at the time ~~an applicant's~~ **a candidate's** degree was received, but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purpose of section 6.2 of this rule *[872 IAC 1-1-6.2]* provided that it certifies that the ~~applicant's~~ **candidate's** total educational program would qualify the ~~applicant~~ **candidate** for graduation with a baccalaureate degree

during the time the institution has been accredited.

SECTION 5. (872 IAC 1-1-6.6) If ~~an applicant's~~ **a candidate's** degree was received at an accredited educational institution ~~pursuant to~~ **under** section 6.3 or 6.4 of this rule *[872 IAC 1-1-6.3 or 872 IAC 1-1-6.4]*, but the educational program that was used to qualify the ~~applicant's~~ **candidate's** major included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which the ~~applicant's~~ **candidate's** degree was received provided the accredited institution **has** either:

(1) ~~has~~ accepted such courses by including them in its official transcript; or

(2) ~~has~~ certified to the board that it will accept such courses for credit toward graduation.

SECTION 6. (872 IAC 1-1-8) (a) This SECTION and sections 8.2 through 8.5 of this rule *[872 IAC 1-1-8.2 through 872 IAC 1-1-8.5]* implement the requirements in IC 25-2.1-3-10 for experience to be obtained by applicants for certified public accountant certificates before the certificate or license may be issued by the board. The experience requirements are twenty-four (24) months of full-time employment in the following positions:

(1) As an employee or an accounting intern engaged in an accounting position in a firm (as that term is defined in 872 IAC 1-0.5-1(11)).

(2) As an employee in a financial or accounting position in industry, government, or a nonprofit organization.

(3) As an employee in an advisory and/or consulting services position related to one (1) or more of the following activities:

(A) Financial.

(B) Accounting.

(C) Operational.

(4) As an instructor teaching accounting in a college or university (four (4) year institutions or junior colleges).

(5) As an instructor teaching accounting in an institution created under ~~IC 25-12-61~~ **IC 20-12-61** or private school registered under IC 20-12-62.

(b) Clerical functions shall not count under this SECTION toward meeting the experience requirements. Clerical functions are positions that do not have accounting significance, including doing merely mathematical calculations, account analysis (looking into accounting books for specific information already recorded), and merely recording information in the general ledger (as opposed to compiling the information). Positions that partly qualify under this SECTION and partly do not qualify shall be treated under this method provided for in section 8.2 of this rule *[872 IAC 1-1-8.2]* with the part of the position that does not qualify under this SECTION being treated as if it were part-time employment.

(c) Experience in fractions of months will be counted.

(d) An applicant may combine the types of experience described in subsection (a). ~~of this rule.~~ To do so, the applicant must obtain a total of twenty-four (24) months of experience.

SECTION 7. (872 IAC 1-1-8.3) (a) An applicant's experience in a particular position meets the requirements in IC 25-2.1-3-10 if the work is verified by ~~a licensee~~ **the holder of an active certificate issued by the board or issued by another state so long as the certificate allows the holder to perform similar acts to those allowed to be performed by certificate holders in Indiana** who:

(1) employed the applicant or a legal entity controlled by that individual employed the applicant;

(2) worked for the same employer as the ~~applicants;~~ **applicant;**

(3) reviewed the accounting work of the applicant on a periodic basis in the capacity of an outside accounting firm, a government agency, or some similar capacity; or

(4) otherwise has direct knowledge of the work performed by the applicant.

(b) Any ~~licensee~~ **certificate holder** who has been requested by an applicant to submit to the board verification of the applicant's experience and has refused to do so shall, upon request by the board, explain in writing or in person the basis for such refusal.

SECTION 8. (872 IAC 1-1-9) ~~An applicant~~ **A candidate** wishing to take the examination must:

(1) complete the application provided for in section 2 of this rule *[872 IAC 1-1-2]*; and

(2) pay the ~~applicant's~~ **candidate's** cost of purchasing the examination, payable to the examination service.

SECTION 9. (872 IAC 1-1-9.5) Notwithstanding sections 2 and 6 of this rule *[872 IAC 1-1-2 and 872 IAC 1-1-6]* and any other provisions of this title *[872 IAC]* that may be to the contrary, ~~applicants~~ **candidates** may **not** take the certified public accountant examination prior to meeting the education requirements. ~~However, if an applicant who has taken the examination before meeting the education requirements fails to satisfactorily complete degree requirements within sixty (60) days after taking the examination, the applicant's examination is invalid. This section shall only apply until January 1, 2000.~~

SECTION 10. (872 IAC 1-1-10) (a) Applications to take the ~~May~~ **certified public accountant** examination must be ~~filed by the preceding March 1. Application to take the November examination must be filed by the preceding September 1. If March 1 or September 1 is a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana professional licensing agency's offices are closed during regular business hours, the deadline shall be the first day thereafter that is not a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana professional licensing agency's offices are~~

~~closed during regular business hours. The date the application is filed shall be calculated in the manner provided for in IC 4-21.5-3-1(f). Applicants~~ **made on a form provided by the board. Candidates** will be notified of their eligibility to sit for the exam.

(b) All fees are nonrefundable and nontransferable. The following is a schedule of fees adopted by the board:

(1) The fee for the examination for CPA and AP licensure is the payment of the ~~applicant's~~ **candidate's** cost of purchasing the examination, payable to the examination service.

(2) Transfer of grades, seventy-five dollars ($75).

(3) CPA certificate by reciprocity, seventy-five dollars ($75).

(4) Triennial certificate of registration for CPAs, PAs, and APs, seventy-five dollars ($75).

(5) For restoration of an expired triennial certificate of registration for CPAs, PAs, and APs, fifty dollars ($50) plus all unpaid renewal fees.

(6) Triennial permit to practice for firms, thirty dollars ($30).

(7) For restoration of an expired triennial permit to practice for firms, fifty dollars ($50) plus all unpaid renewal fees.

(8) Verification of certificate of registration for CPA, PA, or AP to another state, twenty-five dollars ($25).

(c) Notwithstanding subsection (b)(4), a fee for an individual initially registered in the:

(1) second year of a triennial registration period shall be fifty dollars ($50); and

(2) third year of the triennial registration period shall be twenty-five dollars ($25).

(d) Failure of an applicant to pay the initial registration fee will cause the application to be terminated one (1) year after the board's action granting registration.

(e) Should an applicant pay the initial registration fee after the first renewal deadline for all licensees following the applicant's approval for licensure, the applicant must pay the renewal fee in addition to the initial registration fee in order to become licensed.

SECTION 11. (872 IAC 1-1-12) (a) **Effective April 2004,** as the examination for certified public accountant ~~applicants,~~ **candidates,** the board or the board's designee shall use the **computer-based** Uniform CPA examination that is ~~given in May and November~~ **available to be taken in four (4) testing windows as provided in section 14** of ~~each calendar year~~ **this rule** *[872 IAC 1-1-14]* and prepared by the AICPA under a plan of cooperation with the boards of all states and territories of the United States. The examination consists of the following ~~parts:~~ **sections:**

(1) Auditing **and attestation.**

(2) Business ~~law~~ **environment** and ~~professional responsibilities.~~ **concepts.**

(3) Financial accounting and reporting.

(4) ~~Accounting and reporting - taxation, managerial and governmental, and not-for-profit organizations.~~ **Regulations.**

(b) The board or the board's designee shall use the Advisory Grading Service provided by the AICPA under a plan of cooperation with the boards of all states and territories of the United States to assist it in performing its duties under IC 25-2.1.

~~(c) A passing grade of seventy-five percent (75%) or more for each subject is required.~~

~~(d)~~ **(c)** For purposes of section 19 of this rule *[872 IAC 1-1-19]*, for conditioned candidates reexamination requirements, those ~~applicants~~ **candidates** who prior to ~~the May 1994 examination~~ **April 2004** had credit for passing:

(1) auditing shall have credit for auditing **and attestation;**

(2) ~~commercial law shall have credit for passing~~ business law and professional responsibilities **shall have credit for business environment and concepts;**

(3) ~~theory of accounts shall have credit for passing~~ financial accounting and reporting **shall have credit for financial accounting and reporting;** and

(4) ~~accounting practice (two (2) parts) shall have credit for passing~~ accounting and reporting **shall have credit for regulations.**

~~(e)~~ **(d)** As the examination for accounting practitioners, the board or the board's designee shall use sections of the **computer-based** Uniform CPA examination as provided for in this subsection. An individual with a two (2) year associate degree under IC 25-2.1-6-1(a)(3)(A) shall take the financial accounting and reporting and the ~~accounting and reporting~~ **regulations** sections of the Uniform CPA examination. An individual with a baccalaureate degree under IC 25-2.1-6-1(a)(3)(B) shall take only the financial accounting and reporting section of the Uniform CPA examination.

~~(f)~~ **(e)** The board or the board's designee may also make use of the Advisory Grading Service provided by the AICPA to assist in performing its duties under IC 25-2.1. ~~A passing grade of seventy-five percent (75%) or more is required.~~

SECTION 12. (872 IAC 1-1-14) ~~Time of Holding Examinations. Examinations are held in May and November of each~~ **(a) Beginning April 2004, candidates will be allowed to take the examination during the following four (4) testing windows in a calendar** year:

(1) January 2 through February 29.

(2) April 1 through May 31.

(3) July 1 through August 31.

(4) October 1 through November 30.

~~Written notice of the exact dates for examinations shall be mailed to each person who has on file an approved application to sit for the CPA examination.~~

(b) Eligible candidates shall be notified of the time, place, and procedures of the examination or shall independently contact the board or a test center operator identified by the

board to obtain the time, place, and procedures for the examination at an approved test site.

SECTION 13. (872 IAC 1-1-19) (a) ~~This section applies to examinations of candidates. The examination papers shall be graded on the scale of 100.~~ The **candidate must attain the uniform** passing grade ~~in each subject is~~ **of seventy-five** (75), **scaled through a psychometrically acceptable standard setting procedure and approved by the board.**

(b) A candidate ~~must~~ **may** take ~~all subjects at one (1) sitting until the candidate becomes a conditioned candidate or passes all subjects.~~ **the required test sections individually and in any order. Credit for any test section passed shall be valid for eighteen (18) months from the actual date the candidate took that test section provided the following:**

(1) Candidates must pass all four (4) test sections of the Uniform CPA examination within a rolling eighteen (18) month period, which begins on the date that the first test section passed is taken.

(2) Candidates cannot retake a failed test section in the same testing window.

(3) In the event all four (4) test sections of the Uniform CPA examination are not passed within the rolling eighteen (18) month period, credit for any test section passed more than eighteen (18) months previously will expire and that test section must be retaken.

~~(c) IC 25-2.1-3-6 states the requirements for a candidate to achieve conditioned status (receive credit for passing two (2) or three (3) sections of the examination).~~

~~(d) If, on reexamination, the candidate fails to pass the remaining subject or subjects within the time provided for reexamination of candidates having a conditioned standing, such candidate shall revert to the status of a new applicant and shall be required to file a new application and write the entire examination.~~

(c) Candidates having earned conditional credits on the paper and pencil examination, prior to April 2004, will retain conditional credits for the corresponding test sections of the computer based CPA examination as follows:

Paper and Pencil Examination	Computer-Based Examination
Auditing	Auditing and attestation
Financial Accounting and Reporting (FARE)	Financial accounting and reporting
Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business environment and concepts

(d) Additional requirements for the transitional conditional status are as follows:

(1) Candidates who have attained conditional status prior to April 2004 will be allowed a transition period to complete any remaining test sections of the CPA examination. The transition is the maximum number of opportunities that candidates who have conditioned under the paper and pencil examination have remaining, prior to April 2004, to complete all remaining test sections, or the number of remaining opportunities under the paper and pencil examination, multiplied by six (6) months, whichever is first exhausted.

(2) If a previously conditioned candidate does not pass all remaining test sections during the transition period, conditional credits earned under the paper and pencil examination will expire and the candidate will lose credit for the test sections earned under the paper and pencil examination. However, any test section passed during the transition period is subject to the conditioning provisions of the computer-based examination as provided for in subsection (c), except that a previously conditioned candidate will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen (18) months may have elapsed from the date the test section is passed, until the end of the transition period.

(e) Under IC 25-2.1-3-8, the board may extend the term of conditional credit validity if the candidate can show that the credit was lost by reason of circumstances beyond the candidate's control.

(f) A candidate shall be deemed to have passed the Uniform CPA examination once the candidate holds at the same time valid credit for passing each of the four (4) test sections of the examination. For purposes of this SECTION, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that testing section, regardless of the date the candidate actually receives notice of the passing grade.

SECTION 14. (872 IAC 1-1-25) An applicant for a CPA certificate who has ~~written~~ **taken** the Uniform CPA examination under the jurisdiction of another state may be given credit for subjects passed as provided for by IC 25-2.1-3-7.

SECTION 15. THE FOLLOWING ARE TEMPORARILY REPEALED: 872 IAC 1-1-17; 872 IAC 1-1-22; 872 IAC 1-1-23.

LSA Document #04-33(E)
Filed with Secretary of State: January 26, 2004, 11:06 a.m.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-236

Under IC 12-8-3-4.4, LSA Document #03-236, printed at 27 IR 914, was adopted by the Secretary of Family and Social Services Administration on Friday, January 30, 2004, which amends 405 IAC 1-10.5 to define intestinal and multivisceral transplants; to allow intestinal and multivisceral transplant procedures to be reimbursed on a percentage of reasonable cost until such time an appropriate diagnosis related grouping (DRG) as determined by the office can be assigned. The rule which was adopted is the same version as the proposed rule which was published in the Indiana Register on December 1, 2003.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-260

Under IC 12-8-3-4.4, LSA Document #03-260, printed at 27 IR 919, was adopted by the Secretary of Family and Social Services Administration on Friday, January 30, 2004, which amends 405 IAC 6, provisions affecting income of applicants and enrollees for the Indiana Prescription Drug Program, amends the residency definition for eligibility, and removes provisions regarding the refund system of processing claims. The rule which was adopted is the same version as the proposed rule which was published in the Indiana Register on December 1, 2003.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

#03-228(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of #03-228(APCB), printed at 27 IR 1613, has been changed. The changed Notice of Public Hearing appears below:

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 ***May 5, 2004*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-2 and 326 IAC 1-3-4.*

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.

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register. 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) 233-0855. TDD (317) 232-6565. Speech and hearing impaired callers also may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

#03-264(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of #03-264(APCB), printed at 27 IR 1304, has been changed. The changed Notice of Public Hearing appears below:

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 ***May 5, 2004*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 20-25 and new rule 326 IAC 20-56.*

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 new rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027, press 0, and ask for extension 3-5697 (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register. 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) 233-0855. TDD (317) 232-6565. Speech and hearing impaired callers also may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-284

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of #03-284, printed at 27 IR 1618, has been changed. The changed Notice of Public Hearing appears below:

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 ***May 5, 2004*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on new rules 326 IAC 20-57, 326 IAC 20-58, 326 IAC 20-59, 326 IAC 20-60, 326 IAC 20-61, 326 IAC 20-62, and 326 IAC 20-70.*

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register. 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) 233-0855. TDD (317) 232-6565. Speech and hearing impaired callers also may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-23

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 16-5-14 to clarify that an owner or operator must obtain written authorization from the division of oil and gas, department of natural resources, before acting upon a permit change. Makes numerous changes to 312 IAC 17-3, which governs geophysical survey operations. Provides that a geophysical survey operation is considered a well for oil and gas purposes for purposes of issuing an emergency permit. Excludes open or case hole geophysical logs from regulation as a geophysical survey operation. Eliminates the requirement that an operator notify each owner of an occupied dwelling that is located within one mile of a geophysical survey operation. Establishes minimum distances from structures for the conduct of a geophysical survey operation, with separate standards for those activities that do or do not use an explosive energy source. Clarifies that the department of natural resources, division of oil and gas, performs a permit revocation or transfer. Modifies bonding and shothole plugging requirements. Makes other clerical and technical changes. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, at jkane@dnr.state.in.us, or by telephone at (317) 232-4699. Statutory authority: IC 14-37-3; IC 14-10-2-4.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-40

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: Adds 345 IAC 1-7 to prescribe procedures for condemnation, indemnity and disposition of animals and objects, euthanasia of animals and destruction of objects, and cleaning and disinfecting to prevent, detect, suppress, and eradicate diseases and pests of animals. Effective 30 days after filing with the secretary of state. Public questions and comments may be sent to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #04-35

Under IC 4-22-2-23, the Office of the Children's Health Insurance Program intends to adopt a rule concerning the following:

OVERVIEW: Amends 407 IAC 3-7-1 to exclude coverage for psychiatric residential treatment facility (PRTF) services. Statutory authority: IC 12-17.6-2-11.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-22

Under IC 4-22-2-23, the Indiana State Board of Education intends to adopt a rule concerning the following:

OVERVIEW: Amends 511 IAC 6.1-5.1-10.1 to add new courses to the approved list of high school courses in agricultural science. Effective 30 days after filing with the secretary of state. Statutory authority: IC 20-1-1-6; IC 20-1-1.2-18.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-36

Under IC 4-22-2-23, the Indiana State Board of Education intends to adopt a rule concerning the following:

OVERVIEW: Amends 511 IAC 6.1-5.1, the lists of approved high school courses, by adding new science and social studies courses, deleting certain courses, creating separate course titles for advanced placement and college credit courses, changing foreign language to world language as the title for that course area, and creating a consistent format across course areas. Amends 511 IAC 6-7-6.5 to make technical corrections. Statutory authority: IC 20-1-1-6; IC 20-1-1.2-18.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-39

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The Department intends to adopt a rule to

address a health maintenance organization's plan for covering outstanding claims in the event a health maintenance organization is placed into receivership. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-13-16-5.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-41

Under IC 4-22-2-23, the Indiana Board of Accountancy intends to adopt a rule concerning the following:

OVERVIEW: Amends 872 IAC 1-1-6.1 to establish that internships shall not be considered substantial duplication of college course content. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, Indiana 46204-2700 or by electronic mail at pla11@pla.state.in.us. Statutory authority: IC 25-2.1-2-15.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #03-215

DIGEST

Amends 312 IAC 10-5, governing general licenses within floodways (with application, as well, to navigable waters under limited circumstances), by restructuring so provisions having universal application to these general licenses are set forth at the beginning of the rule in new 312 IAC 10-5-0.3 and 312 IAC 10-5-0.6, to allow logjam and obstruction removal activities, from a qualified waterway listed on the Outstanding Rivers List, according to the approval requirements that ordinarily apply to logjam and obstruction removals under a general license, and to place time restrictions on the effectiveness of these general licenses. Effective 30 days after filing with the secretary of state.

312 IAC 10-5-0.3	**312 IAC 10-5-5**
312 IAC 10-5-0.6	**312 IAC 10-5-6**
312 IAC 10-5-3	**312 IAC 10-5-7**
312 IAC 10-5-4	**312 IAC 10-5-8**

SECTION 1. 312 IAC 10-5-0.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-0.3 Determining project eligibility for a general license; general criteria

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 0.3. (a) Except as provided in subsections (b) and (c), a project for a utility line crossing, the removal of logjams and obstructions, or the placement of outfall projects within a floodway is eligible for a general license if the project satisfies the requirements of this rule. For the removal of logjams and obstructions, these requirements include the procedures established by section 0.6 of this rule.

(b) Subsection (a) does not authorize a project in any of the following circumstances:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water's environmental unit has been obtained.

(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).

(3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(4) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.

(5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) Subsection (a) does not authorize the removal of logjams or obstructions within one-half (½) mile of any of the following:

(1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(2) A known mussel resource.

(3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(Natural Resources Commission; 312 IAC 10-5-0.3)

SECTION 2. 312 IAC 10-5-0.6 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-0.6 Relief from general criteria for determining project eligibility for a general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 0.6. (a) This section establishes procedures by which a person may seek a general license for the removal of logjams and obstructions or for an activity that is governed by section 0.3(b)(1) of this rule.

(b) A person must file a written notice, upon a department form if for a logjam removal, with the division of water's environmental unit, including the following information:

(1) A description of the river or stream where the project would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks (for example, a bridge or a dam). The project shall be designated with access routes to the site on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform the proposed work. Permission must be demonstrated for an

access route and disposal site.

(4) Photographs, videotapes, or other graphic documentation that demonstrate existing site conditions.

(c) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (b), the department shall provide a written response that does one (1) of the following:

(1) Approves the terms of the notice.

(2) Provides additional conditions to the approval.

(3) Requires additional information.

(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.

(5) A statement by the person seeking a general license that their project will be completed subject to the conditions set forth under the applicable sections of sections 4, 6, and 8 of this rule.

(d) If the department does not respond in a timely fashion under subsection (c), the written notice is deemed approved.

(e) A copy of the written notice provided under subsection (b), and any additional conditions provided by the department under subsection (c), must be posted by the person in a conspicuous location at the site of the project.

(f) A person who acts under this general license must comply with each of the following:

(1) The terms of the written notice provided under subsection (b).

(2) The applicable conditions set forth under sections 4, 6, and 8 of this rule.

(3) Any additional conditions provided by the department under subsection (c).

Failure to comply with this subsection may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-0.6)*

SECTION 3. 312 IAC 10-5-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-3 Aerial electric, telephone, or cable television lines; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is ~~exempted from the licensing requirements of~~ **authorized without a written license issued by the department under** IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

(1) the activity does not disturb the bed of the waterway beneath the line;

(2) the activity conforms with the minimum clearance requirements of section ~~4(c)(9)~~ **4(b)(9)** of this rule;

(3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and

(4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

(Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)

SECTION 4. 312 IAC 10-5-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-4 Qualified utility line crossings; general license

Authority: IC 14-10-2-4; IC 14-28-2-24
Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes ~~an exemption~~ **a general license** for the placement of a qualified utility line crossing in a floodway.

~~(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:~~

~~(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.~~

~~(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).~~

~~(3) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 (1997) in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of waterway under subsection (c)(8).~~

~~(4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.~~

~~(c)~~ **(b)** A person who wishes to ~~place~~ **implement** a **project for the placement of a qualified** utility line crossing ~~under this section must conform~~ **on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms** to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until

revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause "water pollution" as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for ~~an exemption~~ **a general license** under this subsection.

~~(d)~~ **(c)** A person who elects to act under this section must comply with the general conditions under subsection ~~(c).~~ **(b).** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a ~~permit~~ **license** issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1545; errata filed Mar 13, 2002, 11:51 a.m.: 25 IR 2521)*

SECTION 5. 312 IAC 10-5-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-5 Utility line placement that does not qualify for a general license; waivers for burial depth or clearance

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1-29; IC 14-29-1; IC 14-33; IC 25-31-1; IC 36-9-27

Sec. 5. The placement of a utility line that is not ~~exempt~~ **authorized** under section 4 of this rule requires a license under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 and is subject to the following:

(1) Except as provided in subdivisions (2) and (3), a license application must be filed with the department to demonstrate the construction activities within the utility project area conform with section ~~4(c)(1)~~ **4(b)(1)** through ~~4(c)(9)~~ **4(b)(9)** of this rule.

(2) The department may waive the minimum clearance requirements set forth in section 4(b)(8) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that clearly establishes a need for the waiver.

(B) An economic analysis of the cost required to provide the minimum cover and the savings that would be realized if the minimum cover is waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line would fail as a result of the waiver.

(D) If the placement of the line is beneath the bed of a waterway and is subject to regulation as a flood control project, under the conservancy district act, or under the drainage code, documentation the county or municipality that has maintenance authority over the waterway has also waived the cover requirements. This documentation must:

(i) be on the letterhead of the county or municipality;

(ii) contain a copy of the statute or ordinance under which the county or municipality has regulatory authority over the waterway;

(iii) contain a statement that clearly waives the minimum cover requirements; and

(iv) contain a statement that the waiver will not impede future maintenance or reconstruction projects on the waterway.

(3) The department may waive the minimum clearance requirements set forth in section ~~4(c)(9)~~ **4(b)(9)** of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that establishes the need for the waiver.

(B) An economic analysis of the cost required to provide the minimum clearance and the savings realized if waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line fails as a result of the waiver.

(D) Documentation of the regulatory flood elevation that includes either of the following:

(i) A photocopy of the latest flood insurance study profile with the site and low point of the line clearly indicated.

(ii) Computations by a certified professional engineer licensed under IC 25-31-1.

(Natural Resources Commission; 312 IAC 10-5-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002)

SECTION 6. 312 IAC 10-5-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-6 Removal of logjams from a waterway; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 6. (a) This section establishes a general ~~authorization~~ **license** for the removal of logjams from a waterway for the purpose of providing maintenance to help control flooding.

(b) This section does not authorize ~~an obstruction removal activity in the following areas:~~

~~(1) Within one-half (½) mile of any of the following:~~

~~(A) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.~~

~~(B) A known mussel resource.~~

~~(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.~~

~~(2) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.~~

the removal of logjams and obstructions from a waterway identified under section 0.3 of this rule.

(c) A person who wishes to implement a project for obstruction removal ~~under this general authorization shall~~ **from a waterway not under section 0.3 of this rule must** file a written notice, upon a department form, with the division of ~~fish and wildlife,~~ **water's environmental unit,** including the following information:

(1) A description of the river or stream where obstruction removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor shall also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal. Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:

(A) With respect to a regulated drain, by the drainage board.

(B) With respect to a mutual drain, by all the beneficiaries to the drain.

(C) By the governing body of any county, municipality, or conservancy district in which the project is located.

(4) Photographs, videotapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:

(A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.

(B) Large amounts of fine sediments have not covered ~~nor~~ **or** become lodged in the obstruction.

(C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.

(5) A statement by the person, including the following terms and agreements:

(A) Obstructions will be removed through the use of hand-operated equipment, such as axes, chain saws, and portable winches.

(B) Any site will be identified within the project for which the use of hand-operated equipment is determined to be impracticable. If a site is identified under this subdivision, the statement must include what equipment would be used and that the equipment will not be equipped for excavation. Examples of equipment that may be suitable include the following:

(i) A small tractor.

(ii) A backhoe equipped with a hydraulic thumb.

(iii) A bulldozer with its blade up.

(iv) A log skidder.

(C) Free logs or affixed logs that are crossways in the channel will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:

(i) associated with or in close proximity to larger obstructions; or

(ii) posing a hazard to navigation.

(E) A severely damaged, leaning, or other damaged tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree will be left in place.

(F) No access road will be constructed that will do any of the following:

(i) Destroy more than one (1) acre of trees within a floodway.

(ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.

(iii) Raise the elevation of the flood plain.

(iv) Cross a waterway.

(G) Work shall be conducted exclusively from one (1) side of a river or stream.

(d) ~~Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c),~~ The department shall ~~provide a~~ **act upon the** written ~~response that does one (1) of the following:~~

~~(1) Approves the terms of the notice.~~

~~(2) Provides additional conditions to the approval.~~

~~(3) Requires additional information.~~

~~(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.~~

notice as set forth under section 0.6 of this rule.

~~(e) If the department does not respond in a timely fashion under subsection (d), the written notice is deemed approved.~~

~~(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (d) must be posted by the person in a conspicuous location at the site of the project.~~

(e) A general license for obstruction removal under this section expires:

(1) Ninety (90) days after the receipt of the department's written approval under section 0.6(c) of this rule.

(2) If there is no response by the department under section 0.6(c) of this rule and the applicant acts under section 0.6(d) of this rule, one hundred five (105) days after the date recorded on the applicant's certificate of mailing.

~~(g)~~ **(f)** A person who elects to act under this general ~~authorization~~ **license** must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under ~~subsection (d).~~ **section 0.6(c) of this rule.** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002)*

SECTION 7. 312 IAC 10-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-7 Qualified logjam and sandbar removals from beneath bridges; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 7. ~~A person is exempted from the licensing requirements under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 for~~ The removal of logjams and sandbars beneath or adjacent to a bridge ~~where:~~ **is authorized without a written license issued by the department under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 where:**

(1) equipment is operated from the bridge or the bank within the right-of-way, with no equipment placed in the river or stream;

(2) an access corridor for the placement of equipment extends

no more than fifty (50) feet beyond the right-of-way; and

(3) the logjam or sandbar to be removed is located partially or exclusively within the right-of-way.

(Natural Resources Commission; 312 IAC 10-5-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3397, eff Jan 1, 2002)

SECTION 8. 312 IAC 10-5-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-8 Qualified outfall projects; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes ~~an exemption~~ **a general license** for the placement of a qualified outfall project in a floodway.

~~(b) This section does not authorize the placement of an outfall project:~~

~~(1) within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana;~~

~~(2) within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3);~~

~~(3) below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable; or~~

~~(4) where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.~~

~~(c)~~ **(b)** A person who wishes to ~~place an outfall~~ **implement a** project ~~under this section must conform~~ **for the placement of a qualified outfall project on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms** to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.

(7) The size of the outfall project shall not exceed any of the following dimensions:

(A) Ten (10) square feet in cross-sectional flow area as determined by the summation of cross-sectional area of conduits within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.

(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.

(10) The outlet structure shall:

(A) be supported by a headwall, slopewall, or anchored end section; and

(B) conform to the bank of the waterway.

(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.

(12) Construction debris and material not used as backfill shall be removed from the floodway.

~~(d)~~ **(c)** A person who elects to act under this section must comply with the general conditions under subsection ~~(c).~~ **(b).** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546; errata filed Jan 16, 2002, 1:14 p.m.: 25 IR 1906)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 25, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning general licenses

within floodways (with application, as well, to navigable waters under limited circumstances), logjam and obstruction removal activities, from a qualified waterway listed on the Outstanding Rivers List, according to the approval requirements that ordinarily apply to logjam and obstruction removals under a general license, and time restrictions on the effectiveness of these general licenses. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #03-311

DIGEST

Amends 312 IAC 9 concerning ice fishing shelter; portable ice fishing shelter; general requirements for deer hunting; hunting deer by firearms; hunting deer by bow and arrows; commercial processing of deer; beavers; foxes, coyotes, and skunks; minks, muskrats, and long-tailed weasels; opossums and raccoons; taking squirrels to protect property; squirrels; Hungarian partridges; ruffed grouse; wild turkeys; endangered species of birds; collection and possession of amphibians; reptile captive breeding license; special purpose turtle possession permit; endangered species of fish; sport fishing methods for ice fishing; largemouth bass; trout; special purpose salvage permit; aquaculture permit; and wild animal possession permit. Effective 30 days after filing with the secretary of state.

312 IAC 9-1-9.5
312 IAC 9-1-11.5
312 IAC 9-3-2
312 IAC 9-3-3
312 IAC 9-3-4
312 IAC 9-3-10
312 IAC 9-3-11
312 IAC 9-3-12
312 IAC 9-3-13
312 IAC 9-3-14
312 IAC 9-3-15
312 IAC 9-3-17
312 IAC 9-4-7
312 IAC 9-4-10
312 IAC 9-4-11
312 IAC 9-4-14
312 IAC 9-5-4
312 IAC 9-5-6
312 IAC 9-5-7
312 IAC 9-5-9
312 IAC 9-5-11
312 IAC 9-6-9
312 IAC 9-7-2
312 IAC 9-7-6
312 IAC 9-7-13
312 IAC 9-10-9
312 IAC 9-10-9.5
312 IAC 9-10-10
312 IAC 9-10-13.5
312 IAC 9-10-17
312 IAC 9-11-1
312 IAC 9-11-2
312 IAC 9-11-14

SECTION 1. 312 IAC 9-1-9.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-1-9.5 "Ice fishing shelter" defined
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 9.5. "Ice fishing shelter" means an ice fishing house, shanty, or fully enclosed structure. *(Natural Resources Commission; 312 IAC 9-1-9.5)*

SECTION 2. 312 IAC 9-1-11.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-1-11.5 "Portable ice fishing shelter" defined
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 11.5. "Portable ice fishing shelter" means a temporary structure that is each of the following:
(1) Collapsible.
(2) Constructed of natural or synthetic type material.
(3) Easily carried or hauled to and from the ice by an individual.
(Natural Resources Commission; 312 IAC 9-1-11.5)

SECTION 3. 312 IAC 9-3-2, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-2 General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the hunting, transportation, and disposal of deer.

(b) Species of deer other than white-tailed deer (Odocoileus virginianus) are exempted from this section and sections 3 through 9 of this rule. A person who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by sections 3 through 8 of this rule are nonexclusive. An individual may apply for one (1) or more of these licenses.

(d) Before September 1, 2007, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.

(e) The use or aid of a food product that is transported and placed for consumption, salt, mineral blocks, prepared solid or liquid intended for ingestion (herein called bait), snares, dogs, or other domesticated animals to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited

area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area, which may be attractive to deer as the result of normal agricultural activity, is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

(f) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt deer unless the person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a deer license or tag issued to another person.

(g) The temporary transportation tag described in subsection (f) must, immediately upon taking a deer, be notched as to the sex of the deer and the month and day of the kill. A tag ~~which~~ **that** is notched other than three (3) times is void. A person must not tag a deer other than with a tag issued to the person who took the deer. A deer leg must be tagged before leaving the field. A deer ~~which~~ **that** is in the field is not required to be tagged if the person who kills the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

(h) A person who takes a deer must ~~deliver~~ **cause delivery of** the deer carcass to an official checking station for registration on the occurrence of the earlier of one (1) of the following:

(1) Within ~~twenty-four (24)~~ **forty-eight (48)** hours of taking of the deer.

(2) Before the deer is removed from this state.

The person who delivers the deer carcass to an official checking station for registration must provide accurate information for the check station logs.

(i) After the checking station operator records the permanent seal number on the log and collects the upper portion of the license, where applicable, along with the temporary transportation tag, the hunter is provided with that seal. The seal must be affixed by the hunter and sealed to prevent its removal (without cutting the seal or the body part to which it is affixed), before processing of the deer begins, by affixing the seal:

(1) between a tendon and bone;

(2) through a section of skin or flesh; or

(3) around a branched antler.

(j) The checking station operator must accurately and legibly complete all forms provided by the department and must make those forms available to department personnel upon request.

(k) An individual authorized to act under this subsection must attach ~~a paper~~ to a deer carcass ~~which~~ **a paper that** states the name and address of the individual and the date and sex of the deer taken. The requirements of subsections (f) through (g) also apply except to the extent those subsections identify the physical characteristics of a tag. The individuals authorized to act under this subsection are as follows:

(1) A lifetime license holder.

(2) A youth license holder.

(3) For a deer taken on a landowner's land, each of the following:

(A) The resident landowner.

(B) The spouse of the resident landowner.

(C) A child of the resident landowner who is living with the landowner.

(4) For a deer taken on farmland leased from another person, each of the following:

(A) The resident lessee who farms the land.

(B) The spouse of the resident lessee.

(C) A child of the resident lessee who is living with the lessee.

(5) An Indiana serviceman or servicewoman who is hunting under IC 14-22-11-11.

(l) A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on state-owned or state-leased lands, U.S. Forest Service lands, the Muscatatuck National Wildlife Refuge, or the Big Oaks National Wildlife Refuge must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber ~~which~~ **that** penetrates a tree more than one-half (½) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

(m) The head of a deer must remain attached to the carcass until the tag is attached and locked at the deer checking station.

(n) The use of infrared sensors to locate or take deer is prohibited. It is unlawful to hunt or to retrieve deer with the aid of an infrared detector.

(o) Notwithstanding subsection (e), dogs may be used only while on a leash to track or trail wounded deer.

(p) Notwithstanding subsection (e), donkeys, mules, and horses may be used for transportation to and from a hunt but may not be used while hunting.

(q) The possession of an electronic deer call is prohibited. A person must not hunt deer with the aid of an electronic deer call. *(Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1528; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 4. 312 IAC 9-3-3, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-3 Hunting deer by firearms

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1; IC 35-47-2

Sec. 3. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer by firearms under IC 14-22-12-1(12), IC 14-22-12-1(13), IC 14-22-12-1(15), or IC 14-22-12-1(16); or

(2) hunting by the use of firearms under IC 14-22-11-1.

(b) The season for hunting deer with firearms is as follows:

(1) The firearms season using shotgun, shotgun with rifled barrel, handgun, muzzle loading gun, or muzzle loading handgun is from the first Saturday after November 11 and continuing for an additional fifteen (15) days.

(2) The seasonal limit for hunting deer under this subsection is one (1) antlered deer.

(c) In addition to the season established under subsection (b), the season for using a muzzle loading gun or muzzle loading handgun only extends from the first Saturday after the firearms season established under subsection (b) and continues for fifteen (15) additional days. The seasonal limit for hunting deer under this extended season is one (1) deer of either sex.

(d) A person must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(e) A person must not hunt deer unless that person wears hunter orange.

(f) ~~Bow and arrows must not be possessed by~~ A person **must not possess bow and arrows** while hunting under this section.

(g) The following requirements apply to the use of firearms under this section:

(1) A shotgun must have a gauge 10, 12, 16, 20, or.410 bore loaded with a single projectile. A shotgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.

(2) A handgun must:

(A) conform to the requirements of IC 35-47-2;

(B) have a barrel at least four (4) inches long; and

(C) fire a bullet of.243 inch diameter or larger.

All 38 special ammunition is prohibited. The handgun cartridge case, without bullet, must be at least one and sixteen-hundredths (1.16) inches long. A handgun must not be concealed. Full metal jacketed bullets are unlawful. A handgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine. All 25/20, 32/20, 30 carbine, and 38 special ammunition is prohibited.

(3) A muzzle loading gun must be .44 caliber or larger, loaded with a ~~single ball-shaped or elongated~~ bullet ~~of~~ at least ~~.44 caliber.~~ **.357 inch or larger.** A muzzle loading handgun must be single shot,.50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading firearm must be loaded from the muzzle. A muzzle loading firearm may be possessed in the field outside lawful shooting hours only if:

(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or

(B) for flintlock firearms, the pan is not primed.

(4) Over-and-under combination rifle-shotguns are prohibited.

(Natural Resources Commission; 312 IAC 9-3-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 5. 312 IAC 9-3-4, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Hunting deer by bow and arrows

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer with bow and arrows under IC 14-22-12-1(14) or IC 14-22-12-1(17) and is supplemental to section 2 of this rule; or

(2) hunting by the use of bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer with bow and arrows during the early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is from September 15 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(d) The seasonal limit for hunting under this section is one (1) deer of either sex. ~~A person must not take an antlered deer by means of a crossbow.~~

(e) A person must not hunt deer under this section except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(f) A person must not hunt deer under this section unless that person wears hunter orange. However, this subsection does not apply before the commencement of the firearms season set forth in section 3(b) of this rule and after the muzzle loading gun season set forth in section 3(c) of this rule.

(g) A person must not hunt under this section unless that person possesses only one (1) bow. A ~~firearm must not be possessed by the~~ person **must not possess a firearm while** hunting under this section.

(h) The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any track, trough, channel, arrow rest, or other device that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(i) Notwithstanding subsection (h), a person may use a crossbow to take antlerless deer during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

(1) No person shall use a crossbow of less than one hundred twenty-five (125) pounds pull.

(2) No person shall use a crossbow that does not have a mechanical safety.

(3) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(j) As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. *(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 6. 312 IAC 9-3-10, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-10 Commercial processing of deer

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 10. (a) A person who receives deer for processing and charges a fee must maintain accurate daily records of the following:

(1) The dates deer are received and disposed of.

(2) The name and address of the owner of the deer.

(3) The state or province from which the deer was taken.

(4) The official tag and seal number or certificate of ownership number.

(b) These records shall be retained by the person or persons responsible for preparation or maintenance for at least eighteen (18) months following that preparation **and must register with the department annually.**

(c) A law enforcement officer may enter premises used for deer preparation at all reasonable hours to inspect those premises and the daily records required under subsection (a). *(Natural Resources Commission; 312 IAC 9-3-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 7. 312 IAC 9-3-11, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-11 Beavers

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 11. (a) The season for taking beavers is from 8 a.m. on November 15 until noon on March 15 of the following year.

(b) ~~It is unlawful to~~ **A person must not** possess a beaver except from November 15 until ~~March 22~~ **April 4** of the following year. *(Natural Resources Commission; 312 IAC 9-3-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 8. 312 IAC 9-3-12, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-12 Foxes, coyotes, and skunks

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 12. (a) ~~Except as provided in subsection (c),~~ The season for hunting red foxes **and** gray foxes ~~and coyotes~~ is from noon on October 15 until noon on February 28 of the following year.

(b) ~~Except as provided in subsection (c),~~ The season for trapping red foxes, gray foxes, ~~coyotes,~~ and skunks is from 8 a.m. on October 15 until noon on January 31 of the following year.

(c) Except as provided in subsection (d), the season for hunting and trapping coyotes is from noon on October 15 until noon on March 15 of the following year. A coyote must not be possessed from April 5 through October 14 except to provide for its prompt disposal.

~~(c) It is lawful for:~~

~~(1)~~ **(d)** A person who possesses land, or ~~(2)~~ another person designated in writing by that person, ~~to~~ **may** take coyotes on that land at any time.

~~(d) It is unlawful to~~ **(e) A person must not** possess a red fox or gray fox except from October 15 until March ~~7~~ **20** of the following year.

~~(e)~~ ~~It is unlawful to~~ **(f) A person must not** possess a skunk except from October 15 until February ~~7~~ **20** of the following year. *(Natural Resources Commission; 312 IAC 9-3-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 9. 312 IAC 9-3-13, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-13 Minks, muskrats, and long-tailed weasels
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 13. (a) The season for trapping minks, muskrats, and long-tailed weasels is from 8 a.m. on November 15 until noon on January 31 of the following year.

(b) ~~It is unlawful to~~ **A person must not** possess a mink, muskrat, or long-tailed weasel except from November 15 until February ~~7~~ **20** of the following year. *(Natural Resources Commission; 312 IAC 9-3-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 10. 312 IAC 9-3-14, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-14 Opossums and raccoons
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 14. (a) Except as provided in subsection (b), the seasons applicable to raccoons and opossums are as follows:

(1) Hunting from noon on November 8 until noon on January 31 of the following year.

(2) Trapping from 8 a.m. on November 15 until noon on January 31 of the following year.

(3) Chasing from noon on February 15 until noon on October 14.

(b) A nonresident may hunt raccoons under subsection (a)(1) and may trap raccoons under subsection (a)(2) only to the extent that these raccoon seasons in the state of the nonresident are open to Indiana residents.

(c) ~~It is unlawful for an individual or hunting party to~~ **A person must not** possess a firearm, air rifle, or another device capable of taking a raccoon or opossum while chasing a raccoon or opossum during the chasing season established under subsection (a)(3).

(d) ~~It is unlawful to~~ **A person must not** remove, attempt to remove, dislodge, or attempt to dislodge a raccoon from a tree hollow, hole, den, pocket, cavity, burrow, tile, or other place where the raccoon has secreted itself for security or protection or in which the raccoon maintains a nest or den.

(e) ~~It is unlawful to~~ **A person must not** possess an opossum or a raccoon except from November 8 through February ~~7~~ **20** of the following year. *(Natural Resources Commission; 312 IAC 9-3-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 11. 312 IAC 9-3-15, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-15 Taking beavers, minks, muskrats, long-tailed weasels, red foxes, gray foxes, opossums, skunks, raccoons, or squirrels to protect property
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 15. (a) Notwithstanding the requirements of this rule, a resident landowner or a tenant may, without a permit at any time, take a beaver, mink, muskrat, long-tailed weasel, red fox, gray fox, opossum, skunk, ~~or~~ raccoon, **fox squirrel, or gray squirrel** that is discovered while damaging property.

(b) ~~It is unlawful to take~~ **A person who takes** a mammal under subsection (a) ~~unless the landowner or tenant reports~~ **must report** the taking to the division director or to a conservation officer within seventy-two (72) hours of the taking. The mammal ~~shall~~ **must** be disposed of in a lawful manner. **A person must not release a mammal except in the county where the mammal was captured.** *(Natural Resources Commission; 312 IAC 9-3-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 12. 312 IAC 9-3-17, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-17 Squirrels
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 17. (a) The season for hunting and possessing gray squirrels and fox squirrels is as follows:

(1) From August 15 through December 31 north of U.S. 40.

(2) From August 15 through January 31 of the following year south of U.S. 40.

(b) The daily bag limit is five (5) squirrels.

(c) Unless hunting from a boat, ~~it is unlawful for~~ a person ~~to~~ **must not** hunt squirrels after the first Friday of November after November 3 through January 31 of the following year unless that person wears hunter orange.

(d) ~~It is unlawful to~~ **A person must not** shoot into or to otherwise disturb the leaf nest or den of a squirrel.

(e) ~~It is unlawful to~~ **A person must not** hunt or possess a

flying squirrel **except as otherwise provided by this article.** *(Natural Resources Commission; 312 IAC 9-3-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 13. 312 IAC 9-4-10, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-10 Ruffed grouse
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 10. (a) The season for hunting and possessing ruffed grouse is from October 1 through ~~December 31.~~ **the first Friday after November 9.**

(b) The daily bag limit is two (2) ruffed grouse.

(c) A person must not hunt ruffed grouse except in the following counties:
(1) Bartholomew.
(2) Brown.
(3) Clark.
(4) Crawford.
(5) Dearborn (south of U.S. 50).
(6) Greene (east of U.S. 231).
(7) Jackson.
(8) Jefferson.
(9) Jennings (south of U.S. 50).
(10) Johnson.
(11) LaGrange (except Pigeon River Fish and Wildlife Area).
(12) Lawrence.
(13) Martin.
(14) Morgan.
(15) Monroe.
(16) Ohio.
(17) Orange.
(18) Owen.
(19) Putnam (south of U.S. 40).
(20) Perry.
(21) Ripley (south of U.S. 50).
(22) Scott.
(23) Steuben (except Pigeon River Fish and Wildlife Area).
(24) Switzerland.
(25) Washington.

(d) A person must not hunt ruffed grouse unless that person wears hunter orange. *(Natural Resources Commission; 312 IAC 9-4-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 14. 312 IAC 9-4-11, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-11 Wild turkeys
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 11. (a) Except as provided in subsection ~~(b),~~ **(c),** the **spring** season for hunting and possessing wild turkeys is from the first Wednesday after April 20 and continuing for an additional eighteen (18) consecutive days.

(b) The fall season for hunting and possessing wild turkeys with bows and arrows is from October 1 to the end of the fall turkey season with firearms, which begins on the first Wednesday after October 14 and continues for an additional four (4) consecutive days except as provided in subsection (c).

~~(b)~~ **(c)** The ~~season~~ **spring and fall seasons** for hunting and possessing wild turkeys on Camp Atterbury and the Big Oaks National Wildlife Refuge ~~will~~ **shall** be determined **by the director** on an annual basis. ~~by the director.~~

~~(c)~~ **(d)** The limit for taking and possessing is one (1):
(1) bearded **or male** wild turkey ~~or~~ **during the spring season; and**
(2) ~~male~~ wild turkey **of either sex during any fall season.**

~~(d)~~ **(e)** A person must not hunt wild turkeys except between one-half (½) hour before sunrise and sunset.

~~(e)~~ **(f)** A person must not take a wild turkey except with the use of one (1) of the following:
(1) A ~~10, 12, 16, or 20 gauge~~ shotgun **not smaller than 20 gauge and not larger than 10 gauge** loaded only with shot of **size** 4, 5, 6, 7, or 7½.
(2) A muzzle loading shotgun **not smaller than 20 gauge and not larger than 10 gauge** loaded only with shot of 4, 5, 6, 7, or 7½.
(3) Bow and arrows.

~~(f)~~ **(g)** A person must not hunt wild turkeys in ~~the following counties:~~
~~(1) Rush.~~
~~(2) Shelby.~~ **any fall season except in a county the director designates, on an annual basis, by emergency rule.**

~~(g)~~ **(h)** The use of a dog, another domesticated animal, a live decoy, a recorded call, an electronically powered or controlled decoy, or bait to take a wild turkey is prohibited. An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited ~~which~~ **that** is attractive to wild turkeys resulting from:
(1) normal agricultural practices; or
(2) the use of a manufactured scent, a lure, or a chemical attractant.

~~(h)~~ **(i)** A person must not possess a handgun while hunting wild turkeys.

~~(i)~~ **(j)** Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless ~~that person possesses~~ **possessing** a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a wild turkey license or tag issued to another person.

~~(j)~~ **(k)** The temporary transportation tag described in subsection ~~(i)~~ **(j)** must, immediately after taking a wild turkey, be notched as to the month and day of the taking and attached to a leg of the turkey directly above the spur. A tag ~~which~~ is **void if** notched more than twice. ~~is void.~~ The temporary transportation tag must be attached to a leg of the wild turkey directly above the spur. **A person who takes a turkey must cause delivery of** the turkey ~~must be transported~~ to an official turkey checking station within ~~twenty-four (24)~~ **forty-eight (48)** hours of taking for registration. After the checking station operator records the permanent seal number on the log, the ~~hunter~~ **person** is provided with that seal. The ~~hunter shall~~ **person must** immediately and firmly affix the seal to the leg of the turkey directly above the temporary transportation tag. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

~~(k)~~ **(l)** Each of the following individuals must tag a turkey carcass immediately after taking with a paper that states the name and address of the individual and the date the turkey was taken:

(1) A lifetime license holder.

(2) A youth license holder.

(3) For a wild turkey taken on a landowner's land, each of the following:

(A) The resident landowner.

(B) The spouse of the resident landowner.

(C) A child of the resident landowner who is living with the landowner.

(4) For a wild turkey taken on land leased from another person, each of the following:

(A) The resident lessee who farms the land.

(B) The spouse of the resident lessee.

(C) A child of the resident lessee who is living with the lessee.

(5) An Indiana serviceman or servicewoman hunting under IC 14-22-11-11.

~~(l)~~ **(m)** The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken.

(n) A person must not hunt turkeys from the first Wednesday after October 14 and continuing for an additional four (4) consecutive days unless the person wears hunter orange while moving in the field. When the hunter is stationary, the hunter orange clothing may be removed provided that the hunter posts at least one hundred (100) square inches of hunter orange that is visible in all directions within fifteen (15) feet of the hunter's stationary position. *(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1533; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 15. 312 IAC 9-4-14, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-14 Endangered and threatened species; birds

Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22

Sec. 14. The following species of birds are threatened or endangered and are subject to the protections provided under ~~IC 14-22-34-12:~~ **312 IAC 9-2-7:**

(1) American bittern (Botaurus lentiginosus).

(2) Least bittern (Ixobrychus exilis).

(3) Black-crowned night-heron (Nycticorax nycticorax).

(4) Yellow-crowned night-heron (Nyctanassa violacea).

(5) Trumpeter swan (Sygnus buccinator).

(6) Osprey (Pandion haliaetus).

(7) Bald eagle (Haliaeetus leucocephalus).

(8) Northern harrier (Circus cyaneus).

(9) Peregrine falcon (Falco peregrinus).

(10) Black rail (Laterallus jamaicensis).

(11) King rail (Rallus elegans).

(12) Virginia rail (Rallus limicola).

(13) ~~Sandhill crane (Grus canadensis).~~ **Common moorhen (Gallinula chloropus).**

(14) Whooping crane (Grus americana).

~~(14)~~ **(15)** Piping plover (Charadrius melodus).

~~(15)~~ **(16)** Upland sandpiper (Bartramia longicauda).

~~(16)~~ **(17)** Least tern (Sterna antillarum).

~~(17)~~ **(18)** Black tern (Chlidonias niger).

~~(18)~~ **(19)** Barn owl (Tyto alba).

~~(19)~~ **(20)** Short-eared owl (Asio flammeus).

~~(20) Bewick's wren (Thryomanes bewickii).~~

(21) Sedge wren (Cisothorus platensis).

(22) Marsh wren (Cisothorus palustris).

(23) Loggerhead shrike (Lanius ludovicianus).

(24) Golden-winged warbler (Vermivora chrysoptera).

(25) Kirtland's warbler (Dendroica kirtlandii).

~~(26) Bachman's sparrow (Aimophila aestivalis).~~

~~(27)~~ **(26)** Henslow's sparrow (Ammodramus henslowii).

~~(28)~~ **(27)** Yellow-headed blackbird (Xanthocephalus xanthocephalus).

(Natural Resources Commission; 312 IAC 9-4-14; filed May

12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; filed Dec 26, 2001, 2:40 p.m.: 25 IR 2535; filed May 16, 2002, 12:25 p.m.: 25 IR 3046; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 16. 312 IAC 9-5-4, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-4 Endangered and threatened species; reptiles and amphibians

Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22

Sec. 4. The following species of reptiles and amphibians are threatened or endangered and are subject to the protections provided under ~~IC 14-22-34-12.~~ **312 IAC 9-2-7:**

(1) Hellbender (Cryptobranchus ~~alleganiesis).~~ **alleganiensis).**
(2) Northern red salamander (Pseudotriton ruber).
(3) Four-toed salamander (Hemidactylium scutatum).
(4) Green salamander (Aneides ~~aenus).~~ **aeneus).**
(5) Copperbelly water snake (Nerodia erythrogaster).
(6) Butler's garter snake (Thamnophis butleri).
(7) Kirtland's snake (Clonophis ~~kirtlandi).~~ **kirtlandii).**
(8) Scarlet snake (Cemophora coccinea).
(9) Smooth green snake ~~(Ophedrys~~ **(Opheodrys** vernalis).
(10) Crowned snake (Tantilla coronata).
(11) Cottonmouth (Agkistrodon piscivorus).
(12) Massasauga (Sistrurus catenatus).
(13) Timber rattlesnake (Crotalus horridus).
(14) Eastern mud turtle (Kinosternon subrubrum).
(15) Spotted turtle (Clemmys guttata).
(16) Heiroglyphic turtle (Pseudemys concinna).
(17) Alligator snapping turtle (Macroclemys temmincki).
(18) Blanding's turtle (Emydoidea ~~blandingi).~~ **blandingii).**
(19) Crawfish frog (Rana areolata).
(20) Ornate box turtle (Terrapene ornata).

(Natural Resources Commission; 312 IAC 9-5-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 16, 2002, 12:25 p.m.: 25 IR 3047; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 17. 312 IAC 9-5-6, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-6 Collection and possession of reptiles and amphibians native to Indiana

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22-11-1; IC 14-22-11-8; IC 14-22-12-1

Sec. 6. (a) A resident must not collect reptiles or amphibians from the wild unless the person **holds a valid:**

(1) ~~holds a valid~~ hunting license, or is excepted from holding a valid hunting license, under IC 14-22-11-1; or
(2) ~~holds a valid~~ fishing license, or is excepted from holding a fishing license, under IC 14-22-11-8.

(b) A nonresident must not collect reptiles or amphibians from the wild unless the person possesses a nonresident yearly license to hunt under IC 14-22-12-1(6).

(c) Except as provided in sections 2 and 3 of this rule, the possession limit is four (4) with respect to any species of reptile or amphibian ~~collected~~ **native to Indiana possessed** under this section **except as provided in section 11 of this rule. A person must not, however, collect an eastern box turtle (Terrapene carolina) from the wild.**

(d) A person must not collect **a** reptile or amphibian ~~eggs~~ **egg** from the wild.

(e) Except for a reptile lawfully possessed and fitted with a passive integrated transponder under section 9(h) of this rule, a reptile or amphibian collected under this section must not be sold.

(f) The offspring of an amphibian taken under this section must not be sold.

(g) ~~The offspring of a reptile taken under this section may be sold by~~ A reptile captive breeder (who is in compliance with section 9 of this rule) **may sell the offspring of a reptile, taken under this section,** to any person.

(h) A reptile or amphibian taken from the wild must not be released back into the wild unless one (1) of the following conditions is met:

(1) A person releases an animal without a permit issued under subdivision (2) where the animal as follows:
(A) Has not been held in an enclosure with another reptile or amphibian.
(B) Has not been in captivity for more than thirty (30) days.
(C) Is released at the point of capture.
(2) The division issues a permit to a person to release an animal, and the person releases the animal under the terms of the license.

(Natural Resources Commission; 312 IAC 9-5-6; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3672; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 18. 312 IAC 9-5-7, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-7 Sale and transport for sale of reptiles and amphibians native to Indiana

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22; IC 20-1-1-6; IC 20-1-1.6-2

Sec. 7. (a) This section governs the sale, transport for sale, or offer for sale or transport for sale of any reptile or amphibian native to Indiana, regardless of place of origin.

(b) Except as otherwise provided in this section and in section 6(g) of this rule, the sale, transport for sale, or offer to sell or

transport for sale **of** a reptile or amphibian native to Indiana is prohibited. **A person must not sell a turtle, regardless of species or origin, with a carapace less than four (4) inches long.**

(c) As used in this rule, "reptile or amphibian native to Indiana" means those reptiles and amphibians with the following scientific names, including common names for public convenience, but the scientific names control:

(1) Hellbender (Cryptobranchus alleganiensis).
(2) Mudpuppy (Necturus maculosus).
(3) Streamside salamander (Ambystoma barbouri).
(4) Jefferson's salamander (Ambystoma jeffersonianum).
(5) Blue-spotted salamander (Ambystoma laterale).
(6) Spotted salamander (Ambystoma maculatum).
(7) Marbled salamander (Ambystoma opacum).
(8) Smallmouth salamander (Ambystoma texanum).
(9) Eastern tiger salamander (Ambystoma tigrinum tigrinum).
(10) Eastern newt (Notophthalmus viridescens).
(11) Green salamander (Aneides aeneus).
(12) Northern dusky salamander (Desmognathus fuscus).
(13) Two-lined salamander (Eurycea cirrigera).
(14) Longtailed salamander (Eurycea longicauda).
(15) Cave salamander (Eurycea lucifuga).
(16) Four-toed salamander (Hemidactylium scutatum).
(17) Redbacked salamander (Plethodon cinereus).
(18) Zigzag salamander (Plethodon dorsalis).
(19) Slimy salamander (Plethodon glutinosus).
(20) Ravine salamander (Plethodon richmondi).
(21) Red salamander (Pseudotriton ruber).
(22) Lesser siren (Siren intermedia).
(23) Eastern spadefoot toad (Scaphiopus ~~holbrooki).~~ **holbrookii).**
(24) American toad (Bufo americanus).
(25) Fowler's toad (Bufo fowleri).
(26) Cricket frog (Acris crepitans).
(27) Cope's gray tree frog (Hyla chrysoscelis).
(28) Green tree frog (Hyla cinerea).
~~(28)~~ **(29)** Eastern gray tree frog (Hyla versicolor).
~~(29)~~ **(30)** Spring peeper (Pseudacris crucifer).
~~(30)~~ **(31)** Striped chorus frog (Pseudacris triseriata).
~~(31)~~ **(32)** Crawfish frog (Rana areolata).
~~(32)~~ **(33)** Plains leopard frog (Rana blairi).
~~(33)~~ **(34)** Bullfrog (Rana catesbeiana).
~~(34)~~ **(35)** Green frog (Rana clamitans).
~~(35)~~ **(36)** Northern leopard frog (Rana pipiens).
~~(36)~~ **(37)** Pickerel frog (Rana palustris).
~~(37)~~ **(38)** Southern leopard frog (Rana utricularia).
~~(38)~~ **(39)** Wood frog (Rana sylvatica).
~~(39)~~ **(40)** Common snapping turtle (Chelydra serpentina serpentina).
~~(40)~~ **(41)** Smooth softshell turtle (Apalone mutica).
~~(41)~~ **(42)** Spiny softshell turtle (Apalone spinifera).
~~(42)~~ **(43)** Alligator snapping turtle (Macroclemys temmincki).
~~(43)~~ **(44)** Eastern mud turtle (Kinosternon subrubrum).
~~(44)~~ **(45)** Musk turtle (Sternotherus odoratus).
~~(45)~~ **(46)** Midland painted turtle (Chrysemys picta marginata).
~~(46)~~ **(47)** Western painted turtle (Chrysemys picta bellii).
~~(47)~~ **(48)** Spotted turtle (Clemmys guttata).
~~(48)~~ **(49)** Blanding's turtle (Emydoidea blandingii).
~~(49)~~ **(50)** Map turtle (Graptemys geographica).
~~(50)~~ **(51)** False map turtle (Graptemys pseudogeographica).
~~(51)~~ **(52)** Ouachita map turtle (Graptemys ouachitensis).
~~(52)~~ **(53)** Heiroglyphic river cooter (Pseudemys concinna).
~~(53)~~ **(54)** Eastern box turtle (Terrapene carolina).
~~(54)~~ **(55)** Ornate box turtle (Terrapene ornata).
~~(55)~~ **(56)** Red-eared slider (Trachemys scripta elegans).
~~(56)~~ **(57)** Eastern fence lizard (Sceloporus undulatus).
~~(57)~~ **(58)** Slender glass lizard (Ophisaurus attenuatus).
~~(58)~~ **(59)** Six-lined racerunner (Cnemidophorus sexlineatus).
~~(59)~~ **(60)** Five-lined skink (Eumeces fasciatus).
~~(60)~~ **(61)** Broad-headed skink (Eumeces laticeps).
~~(61)~~ **(62)** Ground skink (Scincella lateralis).
~~(62)~~ **(63)** Worm snake (Carphophis amoenus).
~~(63)~~ **(64)** Scarlet snake (Cemophora coccinea).
~~(64)~~ **(65)** Racer (Coluber constrictor).
~~(65)~~ **(66)** Kirtland's snake (Clonophis kirtlandii).
~~(66)~~ **(67)** Northern ringneck snake (Diadophis punctatus).
~~(67)~~ **(68)** Black rat snake (Elaphe obsoleta obsoleta).
~~(68)~~ **(69)** Gray rat snake (Elaphe obsoleta spiloides).
~~(69)~~ **(70)** Western fox snake (Elaphe vulpina vulpina).
~~(70)~~ **(71)** Mud snake (Farancia abacura).
~~(71)~~ **(72)** Eastern hognose snake (Heterodon platirhinos).
~~(72)~~ **(73)** Prairie king snake (Lampropeltis calligaster calligaster).
~~(73)~~ **(74)** Black king snake (Lampropeltis getula nigra).
~~(74)~~ **(75)** Eastern milk snake (Lampropeltis triangulum triangulum).
~~(75)~~ **(76)** Red milk snake (Lampropeltis triangulum syspila).
~~(76)~~ **(77)** Northern copperbelly (Nerodia erythrogaster).
~~(77)~~ **(78)** Diamondback water snake (Nerodia rhombifer).
~~(78)~~ **(79)** Northern banded water snake (Nerodia sipedon).
~~(79)~~ **(80)** Rough green snake (Opheodrys aestivus).
~~(80)~~ **(81)** Smooth green snake (Opheodrys vernalis).
~~(81)~~ **(82)** Bull snake (Pituophis ~~melanoleucus~~ **catenifer** sayi).
~~(82)~~ **(83)** Queen snake (Regina septemvittata).
~~(83)~~ **(84)** Brown snake (Storeria dekayi).
~~(84)~~ **(85)** Redbellied snake (Storeria occipitomaculata).
~~(85)~~ **(86)** Crowned snake (Tantilla coronata).
~~(86)~~ **(87)** Butler's garter snake (Thamnophis butleri).
~~(87)~~ **(88)** Western ribbon snake (Thamnophis proximus).
~~(88)~~ **(89)** Plains garter snake (Thamnophis radix).
~~(89)~~ **(90)** Eastern ribbon snake (Thamnophis sauritus).
~~(90)~~ **(91)** Common garter snake (Thamnophis sirtalis).
~~(91)~~ **(92)** Western earth snake (Virginia valeriae).
~~(92)~~ **(93)** Northern copperhead (Agkistrodon contortrix).
~~(93)~~ **(94)** Cottonmouth moccasin (Agkistrodon piscivorus).
~~(94)~~ **(95)** Timber rattlesnake (Crotalus horridus).

~~(95)~~ **(96)** Eastern massasauga (Sistrurus catenatus).

(d) As used in this section, "sale" means:
(1) barter, purchase, trade, or offer to sell, barter, purchase, or trade; or
(2) serving as part of a meal by a restaurant, a hotel, a boarding house, or **the keeper of** an eating house; ~~keeper;~~ however, a hotel, a boarding house, or **the keeper of** an eating house ~~keeper~~ may prepare and serve during open season to:
(A) a guest, patron, or boarder; and
(B) the family of the guest, patron, or boarder;
a reptile or amphibian legally taken by the guest, patron, or boarder during the open season.

(e) As used in this section, "transport" means to move, carry, or ship a wild animal protected by law by any means and for any common or contract carrier knowingly to move, carry, or receive for shipment a wild animal protected by law.

(f) A reptile or amphibian that is not on a state or federal endangered or threatened species list and with a color morphology that is:
(1) albinistic (an animal lacking brown or black pigment);
(2) leucistic (a predominately white animal); or
(3) xanthic (a predominately yellow animal);
is exempted from this section if it was not collected from the wild.

(g) Exempted from this section is an institution governed by, and in compliance with, the Animal Welfare Act (7 U.S.C. 2131, et seq.) and 9 CFR 2.30 through 9 CFR 2.38 (January 1, 1998 edition). To qualify for the exemption, the institution must have an active Assurance of Compliance on file with the Office for the Protection of Risk, U.S. Department of Health and Human Services.

(h) Exempted from this section is a sale made under a reptile captive breeding license governed by section 9 of this rule.

(i) Exempted from this section is the sale to and purchase of reptiles or amphibians by a public school accredited under IC 20-1-1-6(8) or nonpublic school accredited under IC 20-1-1-6(11) and IC 20-1-1.6-2. This exemption does not authorize the sale of reptiles or amphibians by a public school or a nonpublic school.

(j) Exempted from this section is the sale and purchase of a bullfrog (Rana catesbeiana) tadpole or green frog (Rana clamitans) tadpole produced by a resident holder of a hauler and supplier permit or an aquaculture permit, if the tadpole is a byproduct of a fish production operation. As used in this subsection, a tadpole is the larval life stage of a frog for the period in which the tail portion of the body is at least one (1) inch long.

(k) A person who is transporting native reptiles and amphibians in interstate commerce, to be sold outside Indiana, is exempted from this section. *(Natural Resources Commission; 312 IAC 9-5-7; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3673; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1535; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 19. 312 IAC 9-5-9, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-9 Reptile captive breeding license
Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22

Sec. 9. (a) This section establishes the reptile captive breeding license and sets the requirements for a person who wishes to apply for and maintain the license.

(b) The application must be made on a department form.

(c) The annual fee for a license under this section is fifteen dollars ($15).

(d) An application for a license under this section must be made within thirty (30) days of the effective date of this section for a reptile described in subsection (e) and possessed by the applicant before the effective date of this section. Any subsequent license application must be made within five (5) days after the applicant took possession of the first reptile described in subsection (e) and taken for captive breeding purposes.

(e) A reptile captive breeding license authorizes a person who holds the license to possess, breed, and sell the ~~reptiles~~ **snakes** listed in this section. In the following list, where both scientific names and common names are provided, common names are for public convenience but the scientific names control:
(1) Black rat snake (Elaphe obsoleta obsoleta).
(2) Western fox snake (Elaphe vulpina).
(3) Eastern hognose snake (Heterodon platirhinos).
(4) Prairie kingsnake (Lampropeltis calligaster calligaster).
(5) Black kingsnake (Lampropeltis getula nigra).
(6) Eastern milk snake (Lampropeltis triangulum triangulum).
(7) Red milk snake (Lampropeltis ~~trangulum~~ **triangulum** syspila).
(8) Bull snake (Pituophis ~~melanoleucus~~ **catenifer** sayi).
(9) A ~~reptile~~ **snake** that is not on a state or federal endangered or threatened species list and with a color morphology that is:
(A) albinistic (an animal lacking brown or black pigment);
(B) leucistic (a predominately white animal); or
(C) xanthic (a predominately yellow animal);
if it was not collected from the wild.

(f) Captive breeding stock other than a reptile described in subsection (e)(9) must be identified with an individually unique

passive integrated transponder. A transponder must be implanted in each specimen. The type of transponder shall be approved by the commission. The imbedded transponder's code and other required information concerning the general health and condition of the animal must be provided on a departmental form, and verified by a supervising veterinarian, within fourteen (14) days after obtaining the animal.

(g) A reptile held under this section must be confined in a cage or other enclosure that makes escape of the animal unlikely. Each animal must be provided with ample space and kept in a sanitary and humane manner. Animals and cages must be made available for inspection upon request by a conservation officer.

(h) Each animal possessed under this section must be lawfully acquired. No more than four (4) animals of each species described in subsection (e) may be collected annually from the wild. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition for animals not taken from the wild shall be presented to a conservation officer upon request. A person licensed under this section who collects an animal from the wild must document, on a departmental form, when and where the animal was collected. The animal must be fitted with a passive integrated transponder within fourteen (14) days of taking possession.

(i) A person licensed under this section must not possess an animal larger than the maximum sale length described in this subsection unless the animal is fitted with a transponder as part of the breeding stock of the person. Captive-bred offspring may only be sold before an individual attains the following total length:

(1) Fifteen (15) inches for an eastern hognose snake.

(2) Eighteen (18) inches for a black rat snake, western fox snake, black king snake, prairie king snake, eastern milk snake, or red milk snake.

(3) Twenty-eight (28) inches for a bull snake.

(j) A person licensed under this section must maintain accurate records on a calendar year basis on the number and disposition of breeding stock and captive breed young. The records shall include the species and number of animals captured, received, or sold and the birth dates of captive born animals. In addition, the records shall include the complete name and complete address of the person from whom an animal was purchased or to whom an animal was sold. The records shall be maintained at the place of business of the license holder for at least two (2) years after the end of the license year. **Upon request by a conservation officer, the license holder must make** the records ~~must be made~~ available for inspection. ~~upon request by a conservation officer.~~

(k) A person licensed under this section must not release to the wild a captive breeder or the offspring of a captive breeder.

(Natural Resources Commission; 312 IAC 9-5-9; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3675; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 20. 312 IAC 9-5-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-5-11 Special purpose turtle possession permit

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 4-21.5; IC 14-22

Sec. 11. (a) This section establishes the requirements for a special purpose turtle possession permit.

(b) Only an Indiana resident can qualify for a permit under this section. An application must be made on a departmental form.

(c) An application must be made within ten (10) days after taking possession of a native turtle that was not taken from the wild or for the possession of an eastern box turtle that was lawfully acquired by the person before September 1, 2004. A person does not violate section 6 of this rule if the person obtains a permit under this section for an eastern box turtle. An application must show the turtle was lawfully acquired. A receipted invoice, bill of lading, or other evidence approved by the director must accompany the application. To permit a turtle from outside Indiana, the turtle must have been taken lawfully and must be accompanied by a certificate of veterinary inspection from the state of origin.

(d) If supported by appropriate documentation, an unlimited number of native turtles that were legally obtained but not taken from the wild may be possessed under this permit.

(e) A conservation officer shall inspect each cage or enclosure before a permit can be issued. A turtle must be quarantined for at least thirty (30) days and display no signs of illness before being placed with other turtles. A turtle must be confined in a cage or other enclosure that makes escape of the animal unlikely and prevents the entrance of free-roaming turtles. The cage or enclosure must provide the turtle with ample space for exercise and to avoid overcrowding. Each turtle shall be handled, housed, and transported in a sanitary and humane manner. Mature male and female turtles of the same species must be caged separately. Upon request by a conservation officer, an applicant must make any cage or enclosure available for inspection.

(f) A turtle possessed under this section must not be bred, sold, traded, bartered, or released into the wild. A turtle possessed under this section may be given only to an individual who possesses a permit under this section.

(g) A native turtle with a straight-line carapace length of four (4) inches or greater held under this permit must be permanently marked with a unique passive integrated transponder (pit tag) implanted under the skin. Only pit tags that can be read by an AVID Reader may be implanted.

(h) A permit holder must not commercially advertise adoption services. A turtle possessed under this section must not be publicly displayed except under an educational permit issued under 312 IAC 9-10-9.5.

(i) A copy of the records must be kept on the premises of the permit holder for at least two (2) years after the turtle was obtained, and a copy must be provided to a conservation officer upon request. The records shall include the following:

(1) The taxa, number, carapace length, and weight of each turtle obtained.

(2) The complete name, address, and telephone number of the person from whom a turtle was obtained.

(3) The date obtained.

(4) The unique passive integrated transponder code of each implanted turtle.

(j) A conservation officer may enter the premises of the permit holder at all reasonable hours to inspect those premises and any records relative to the permit. The conservation officer shall immediately notify the permit holder if the inspection reveals a turtle is being kept under unsanitary or inhumane conditions. A conservation officer may make a second inspection after ten (10) days, and the permit may be suspended or revoked under IC 4-21.5, and the turtles may be confiscated, if the permit holder fails to comply with the permit.

(k) A permit expires on December 31 of the year the permit was issued. The permit holder must provide an annual report to the division by February 15 of each year with the following information for each turtle possessed under this permit:

(1) The taxa and number of each native turtle obtained.

(2) The complete name, address, and telephone number of the person from whom a turtle was obtained.

(3) The date obtained.

(4) The unique passive integrated transponder code of each implanted turtle.

(l) A permit may be suspended, denied, or revoked under IC 4-21.5 if the permit holder fails to comply with any of the following:

(1) A permit issued under this section.

(2) This article.

(3) Another applicable state, local, or federal law.

(Natural Resources Commission; 312 IAC 9-5-11)

SECTION 21. 312 IAC 9-6-9, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-9 Endangered and threatened species of fish

Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22

Sec. 9. The following species of fish are threatened or endangered and are subject to the protections provided under ~~IC 14-22-34-12.~~ **312 IAC 9-2-7:**

(1) Lake sturgeon (Acipenser fulvescens).
(2) Cavefishes (Amblyopsidae species).
(3) Redside dace (Clinostomus elongatus).
~~(4) Bluebrest darter (Etheostoma camurum).~~
~~(5) Spotted darter (Etheostoma maculatum).~~
~~(6) Spottail darter (Etheostoma squamiceps).~~
~~(7) Tippecanoe darter (Etheostoma tippecanoe).~~
~~(8)~~ **(4)** Variegate darter (Etheostoma variatum).
~~(9)~~ **(5)** Gilt darter (Percina evides).
~~(10) Harlequin darter (Etheostoma histrio).~~
~~(11)~~ **(6)** Greater redhorse (Moxostoma valenciennesi).
(7) Bantam sunfish (Lepomis symmetricus).
(8) Pallid shiner (Hybopsis amnis).
(9) Channel darter (Percina copelandi).
(10) Northern brook lamprey (Ichthyomyzon fossor).

(Natural Resources Commission; 312 IAC 9-6-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 16, 2002, 12:25 p.m.: 25 IR 3048; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 22. 312 IAC 9-7-2, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-2 Sport fishing methods, except on the Ohio River

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 2. (a) Except as provided under section 13 of this rule with respect to the Ohio River, this section governs the lawful methods for fishing under this rule.

(b) An individual may take fish with the aid of illumination of a spotlight, searchlight, or artificial light.

(c) An individual may take fish with not more than three (3) poles, hand lines, or tip-ups at a time. Except as provided in subsection (g), affixed to each line shall be no more than **two** (2) hooks or two (2) artificial baits or harnesses for use with live bait.

(d) A person must not take fish from waters containing state-owned fish, waters of this state, or boundary waters by means of a hook dragged or jerked through the water with the intent to snag fish on contact.

(e) A person must not take trout or salmon from a waterway

unless the fish is hooked in the mouth.

(f) A person must not fish with more than ten (10) limb lines or drop lines at a time. Each line shall have not more than one (1) hook affixed and must bear a legible tag with the name and address of the user. Each line shall be attended at least once every twenty-four (24) hours. A limb line or drop line shall not be used within three hundred (300) yards of a dam ~~which~~ **that** wholly or partly crosses a waterway.

(g) A person must not ice fish **on waters of this state,** except ~~as provided~~ as follows:

(1) A tip-up must be constantly in sight of the user and must have affixed a legible tag bearing the name and address of the user.

(2) An ice fishing ~~enclosure that is placed on the waters of this state between sunset and sunrise~~ **shelter** must **visibly** bear the name and address of the owner ~~visibly~~ in three (3) inch block letters on ~~at least one (1) exterior vertical side. At least one (1) red reflector, or a three (3) inch by three (3) inch reflective material strip, must be mounted on each exterior side of an ice fishing enclosure.~~ **the outside of the door.**

(3) A portable ice fishing shelter that is left unattended must visibly bear the name and address of the owner in three (3) inch block letters on an exterior wall.

(4) An ice fishing shelter or portable shelter that is on the waters between sunset and sunrise must have, on each side of the structure or shelter, at least one (1) red reflector or a three (3) inch by three (3) inch reflective material strip.

~~(3)~~ **(5)** An ice fishing ~~enclosure~~ **shelter or portable shelter** must be removed from **the** waters ~~of this state~~ before ice-out.

~~(4) If an ice fishing enclosure is used after~~ **(6) Except from January 1 through** February 15, ~~of a calendar year, the~~ **an** ice fishing ~~enclosure~~ **shelter or portable shelter** must be removed daily.

~~(5) As used in this subsection, "ice fishing enclosure" means an ice shanty or ice fishing tent.~~

(h) A person must not take fish with more than one (1) trot line, set line, or throw line. A line must have no more than fifty (50) hooks affixed. A trot line must be anchored to the bottom or set not less than three (3) feet below the surface of the water. A legible tag with the name and address of the user must be affixed to each trot line. Each trot line must be attended at least once every twenty-four (24) hours. It is unlawful to take fish from Lake Michigan with a trot line, set line, or throw line.

(i) A person must not take fish from a lake with free-float lines or to fish from a waterway with more than five (5) free-float lines. Not more than one (1) hook shall be affixed to each line. A float shall bear the name and address of the user and must not be constructed of glass. Each free-float line must be in constant attendance by the person fishing.

(j) A person must not possess a fish spear, gig, gaff, pitchfork, bowfishing equipment, crossbow, grab hook, spear gun, club, snag hook, or underwater spear in, on, or adjacent to **any of the following:**

(1) The Galena River (LaPorte County).

(2) Trail Creek (LaPorte County).

(3) The East Branch of the Little Calumet River (LaPorte and Porter Counties).

(4) Salt Creek (Porter County).

(5) The West Branch of the Little Calumet River (Lake and Porter Counties).

(6) Burns Ditch (Porter and Lake Counties).

(7) Deep River downstream from the dam at Camp 133 (Lake County). ~~or~~

(8) The tributaries of these waterways.

(k) A person must not fish the waterways described in subsection (j) or from the St. Joseph River and its tributary streams from the Twin Branch dam downstream to the Michigan state line (St. Joseph County) with more than one (1) single hook per line or one (1) artificial bait or harness for use with live bait. Single hooks, including those on artificial baits, shall not exceed one-half (½) inch from point to shank. Double and treble hooks on artificial baits shall not exceed three-eighths (⅜) inch from point to shank.

(l) A person must not take smelt from other than Lake Michigan and Oliver Lake in LaGrange County by the use of dip nets, seines, or nets except from March 1 through May 30 with either of the following:

(1) One (1) dip net not to exceed twelve (12) feet in diameter.

(2) One (1) seine or net not to exceed twelve (12) feet long and six (6) feet deep and having a stretch mesh larger than one and one-half (1½) inches.

Each seine or net shall have affixed a legible tag with the name and address of the user.

(m) An individual may, by means of a fish spear, gig, speargun, or underwater spear, take only any sucker, carp, gar, bowfin, buffalo, or shad and only from the following waterways:

(1) West Fork of the White River from its junction with the East Fork upstream to the dam below the Harding Street generating plant of the Indianapolis Power and Light Company in Marion County.

(2) East Fork of the White River from its junction with the West Fork upstream to the dam at the south edge of the city of Columbus in Bartholomew County.

(3) White River from its junction with the West Fork of the White River and East Fork of the White River to its junction with the Wabash River in Gibson, Knox, and Pike Counties.

(4) Wabash River from its junction with the Ohio River upstream to State Road 13 at the south edge of the city of Wabash in Wabash County.

(5) Tippecanoe River upstream from its junction with the

Wabash River to one-half (½) mile below its junction with Big Creek in Carroll County. (It is unlawful to possess a fish spear or fish gig in, on, or adjacent to the Tippecanoe River from one-half (½) mile below its junction with Big Creek in Carroll County upstream to the Oakdale Dam ~~which~~ **that** forms Lake Freeman.)

(6) Maumee River from the Ohio state line upstream to the Anthony Boulevard Bridge in the city of Fort Wayne.

(7) Kankakee River from the Illinois state line upstream to State Road 55 bridge south of the city of Shelby in Lake County.

(8) St. Joseph River in St. Joseph and Elkhart counties.

(n) An individual may use a pitchfork or bow and arrow on a waterway only

~~(1)~~ to take any sucker, carp, gar, bowfin, buffalo, or shad between

~~(2)~~ sunrise and sunset.

(o) In addition to any other lawful method, an individual may take a sucker, carp, gar, bowfin, buffalo, or shad **by:**

(1) ~~by~~ bow and arrows from Lake Michigan; or

(2) ~~by~~ spear, gig, spear gun, underwater spear, pitchfork, or bow and arrows from another lake.

(p) An individual may take a sucker, carp, gar, or bowfin with not more than one (1) snare only between sunrise and sunset. *(Natural Resources Commission; 312 IAC 9-7-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537; errata filed Feb 26, 2002, 6:00 p.m.: 25 IR 2254; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 23. 312 IAC 9-7-6, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-6 Black bass

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 6. (a) Except as otherwise provided in this section, the aggregate daily bag limit is five (5) black bass.

(b) The aggregate daily bag limit is three (3) for black bass taken from Lake Michigan. A person must not possess more than three (3) black bass while fishing in or on Lake Michigan.

(c) Except as otherwise provided in this section, the minimum size limit for black bass taken from a waterway is twelve (12) inches but is fourteen (14) inches for black bass taken from lakes (including Lake Michigan).

(d) No minimum length limit for largemouth bass applies for the lakes listed in this subsection as follows:

(1) Brownstown Pit in Jackson County.

(2) Burdette Park Lakes in Vanderburgh County.

(3) Chandler Town Lake in Warrick County.

(4) Cypress Lake in Jackson County.

(5) Deming Park Lakes in Vigo County.

(6) Garvin Park Lake in Vanderburgh County.

(7) Glen Miller Pond in Wayne County.

(8) Hayswood Lake in Harrison County.

(9) Henry County Memorial Park Lake in Henry County.

(10) Hovey Lake in Posey County.

(11) Krannert Lake in Marion County.

(12) Lake Sullivan in Marion County.

(13) Ruster Lake in Marion County.

(14) Schnebelt Pond in Dearborn County.

(e) A person must not take or possess a largemouth bass unless the largemouth bass is less than twelve (12) inches long or more than fifteen (15) inches long from the following designated waters:

(1) Buffalo Trace Lake in Harrison County.

(2) Celina Lake in Perry County.

(3) Delaney Park Lake in Washington County.

(4) Indian Lake in Perry County.

(5) Saddle Lake in Perry County.

(6) Scales Lake in Warrick County.

(7) Shakamak State Park Lakes in Clay County, Greene County, and Sullivan County.

(8) Tipsaw Lake in Perry County.

(9) Ferdinand State Forest Lake in Dubois County.

(10) Montgomery City Park Lake in Daviess County.

(f) The daily bag limit is one (1) largemouth bass from Turtle Creek Reservoir in Sullivan County. A person must not take or possess a largemouth bass from Turtle Creek Reservoir unless the largemouth bass is at least twenty (20) inches long.

(g) A person must not take or possess a largemouth bass from Patoka Lake (Orange, Crawford, and Dubois counties) or Dogwood Lake (Daviess County) unless the largemouth bass is at least fifteen (15) inches long.

(h) A person must not take or possess a largemouth bass from Harden Lake (Parke County) unless the largemouth bass is at least sixteen (16) inches long.

(i) The daily bag limit is two (2) largemouth bass, and a person must not take or possess a largemouth bass unless the largemouth bass is at least eighteen (18) inches long, from the following designated waters:

(1) Tri-County State Fish and Wildlife Area.

(2) Robinson Lake in Whitley County and Kosciusko County.

(3) Ball Lake in Steuben County.

(4) Gibson Lake in Gibson County.

(5) Loon Pit at Blue Grass Fish and Wildlife Area in Warrick County.

(6) Bluegrass Pit at Blue Grass Fish and Wildlife Area in Warrick County.

(j) A person must not take or possess a largemouth bass from Dove Hollow Lake at Glendale State Fish and Wildlife Area.

(k) If this section prohibits a person from taking or possessing a black bass from a specified lake or waterway, a person must not possess a bass of the prohibited class on or adjacent to the lake or waterway. *(Natural Resources Commission; 312 IAC 9-7-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1539; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 24. 312 IAC 9-7-13, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-13 Trout and salmon
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 13. (a) A person must not possess a brook trout, rainbow trout, or brown trout unless the trout is as follows:

(1) Except as provided in subsection (d), at least seven (7) inches long.

(2) Taken from the last Saturday of April after 5 a.m., local time, through ~~December~~ **March** 31, if taken from other than a lake. **A person must not fish for trout during the closed season.**

(b) Except as otherwise provided in this section, the daily bag limit is five (5) trout.

(c) Except as provided in subsection ~~(d),~~ **(e),** the daily bag limit ~~for~~ **is three (3)** lake trout. ~~is three (3).~~

(d) A person must not possess a brown trout from Oliver Lake, Olin Lake, or Martin Lake (LaGrange County) **or the East Fork of Whitewater River downstream of Brookville Reservoir (Franklin County)** unless the trout is at least eighteen (18) inches long. The daily bag limit is five (5) trout of which no more than one (1) shall be brown trout.

(e) A person must not possess a trout or salmon taken from Lake Michigan or its tributaries unless the fish is at least fourteen (14) inches long. The daily bag limit is five (5) for any combination of trout and salmon taken under this subsection, of which no more than two (2) shall be lake trout. Exempted from this subsection, however, are trout taken from the St. Joseph River in St. Joseph and Elkhart counties and its tributaries upstream from the Twin Branch Dam.

(f) A person must not possess more than a single day's bag limit identified in subsection ~~(d)~~ **(e)** while fishing on Lake Michigan.

(g) The areas closed to trout and salmon fishing under this section are in addition to areas closed to all fishing under 312 IAC 9-6-6. *(Natural Resources Commission; 312 IAC 9-7-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; filed May 28, 1998, 5:14 p.m.: 21 IR 3722; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 25. 312 IAC 9-10-9, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-9 Wild animal rehabilitation permit
Authority: IC 14-22-2-6; IC 14-22-11-12
Affected: IC 4-21.5; IC 14-22

Sec. 9. (a) **This section governs a permit to possess** a wild animal ~~which is a mammal or bird protected by law, may be possessed~~ for rehabilitation. ~~purposes only in accordance with a~~ **The** permit ~~as issued~~ **is required for a mammal, bird, reptile, or amphibian and is available only to an individual who is a resident of Indiana. A white-tailed deer must not be possessed** under this section **for more than one hundred eighty (180) days unless a conservation officer inspects the animal and determines an extended period may be reasonably expected to result in its rehabilitation.**

(b) An application for a permit under this section shall be completed on a departmental form and must establish the following:

(1) The applicant has rehabilitation experience and a knowledge of wildlife rehabilitation techniques. The required experience and knowledge may be met by one (1) of the following:

(A) A bachelor of science degree in a wildlife related field.

(B) At least one (1) year of experience with a:

(i) veterinarian;

(ii) zoo;

(iii) university animal clinic;

(iv) county animal shelter; or

(v) licensed rehabilitation clinic.

(C) Possession for at least two (2) years of another permit under this section.

(D) Other knowledge and background, including the completion of rehabilitation workshops and seminars, if found by the division director to qualify the applicant.

(2) The name and address of a veterinarian willing to assist the applicant with the rehabilitation of wild animals. The veterinarian shall sign the application and attest to having experience in the care and rehabilitation of wild mammals and birds. **If the applicant is a veterinarian, the signature of another veterinarian is not required.**

(3) A listing of the wildlife rehabilitation reference books in possession of the applicant.

(4) The names, addresses, and telephone numbers of any other individuals who will assist the applicant. **Assistants must possess sufficient experience and adequate facilities to tend the species in their care and be authorized in writing by the permit holder to provide care for that species of animal in their own facility.**

(5) The species that will be accepted for rehabilitation.

(6) A description of the rehabilitation facilities, equipment,

and supplies. The description shall include the following:
(A) Cages.
(B) Intensive care units.
(C) Aviaries.
(D) Falconry equipment.
(E) Medical diagnostic equipment.
(F) Medical supplies.
(G) Food sources.
(H) Other items to be utilized in the rehabilitation process.
A cage description shall provide its internal dimensions and shall specify the materials used for flooring, walls, and perches. The applicant shall list what species will be housed in the various enclosures and the purpose for each enclosure, for example, convalescing, training, or quarantine.

(c) An amended application ~~shall~~ **must** be filed with the division if there is a material change to the information provided in the original application. ~~If additional persons will assist the permit holder,~~ The amended application ~~shall~~ **must** include ~~their names, addresses, and telephone numbers.~~ **the name, address, and telephone number of any additional person who would assist the permit holder.**

(d) The permit holder must file an application by January 15 of each year in order to renew the permit. The annual report required under subsection (i) must accompany the renewal application. The signature of a veterinarian is not required for a renewal application.

(e) The issuance of a permit under this section does not relieve an individual from any requirement for a federal permit. If the terms of a federal permit and the permit issued under this section differ, the more restrictive terms prevail.

(f) A wild animal possessed pursuant to a permit issued under this section must not be displayed or placed in physical contact with the public, except according to the terms of ~~a~~ **an educational** permit issued under ~~this subsection. A permit may be issued by the division director if:~~
~~(1) the purpose for displaying the animal is primarily educational; and~~
~~(2) the animal is not displayed:~~
~~(A) as part of or to promote a commercial venture; or~~
~~(B) in a manner which might cause a member of the public to confuse display of the animal with a commercial venture because of proximity in time or place between the animal's display and the commercial venture.~~
section 9.5 of this rule.

(g) A permit holder must maintain facilities for the retention of a wild animal possessed under this section in a sanitary condition and to conform with any other conditions specified by the permit.

(h) A permit holder must maintain current records for each wild animal to include the following:
(1) The species and condition of the animal.
(2) The name, address, and telephone number of the donor or other source of the animal.
(3) The date of receipt by the permit holder.
(4) The treatment provided to the animal while in captivity.
(5) The method and date of disposition of the wild animal.

(i) The permit holder shall provide an annual report to the division by January 15 of each year. The report shall list the following:
(1) The species and condition of each animal.
(2) The date the animal was received.
(3) The name and address of the donor or other source.
(4) The **method, location, and** date of disposition of the animal.

(j) As soon as a ~~mammal or bird~~ **wild animal** is capable of fending for itself, the animal shall be released into the wild as directed by a conservation officer. If a ~~mammal or bird~~ **wild animal** is not capable of fending for itself, a conservation officer ~~should~~ **must** be contacted for ~~further~~ instructions ~~as to the~~ **concerning its** disposition. ~~of the animal.~~

(k) A permit holder ~~shall~~ **must** not commercially advertise rehabilitation services or solicit ~~mammals or birds~~ for rehabilitation **a wild animal that is subject to this section.**

(l) A permit may be suspended, denied, or revoked under IC 4-21.5 if the permit holder fails to comply with any of the following:
(1) A permit issued under this section.
(2) This article or IC 14-22.
(3) Another applicable state, local, or federal law.

(Natural Resources Commission; 312 IAC 9-10-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2730; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 26. 312 IAC 9-10-9.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-10-9.5 Special purpose educational permit
Authority: IC 14-22-2-6; IC 14-22-11-12
Affected: IC 4-21.5; IC 14-22

Sec. 9.5. (a) This section governs a special purpose educational permit. The permit is required for a person who conducts an educational display or lecture using a wild animal that is a mammal, bird, reptile, or amphibian protected under this article. Exempted from this section are reptiles and amphibians lawfully collected and possessed under 312 IAC 9-5-6. The permit is available only to a person who is at least one (1) of the following:
(1) A licensed rehabilitator.
(2) A licensed falconer.
(3) A licensed game breeder.
(4) A wild animal possession permit holder.

(5) A special purpose turtle possession permit holder.
(6) An educational institution.
(7) A nonprofit organization.
(8) An individual who is employed or sponsored by an educational institution or a nonprofit organization.

(b) Exempted from this section is any zoo, carnival, animal dealer, pet shop, circus, or nature center licensed under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(c) An application must be made on a departmental form. An applicant must show that a wild animal was lawfully acquired with proper documentation. If the animal was obtained under a rehabilitation permit, the animal must be permanently injured and nonreleasable. Documentation must be in the form of a copy of a valid license, permit, receipt, or rehabilitation report showing the lawful acquisition of the wild animal.

(d) An animal possessed under this permit must be handled, housed, and transported in a sanitary and humane manner. A person must not possess a wild animal in a condition that is any of the following:
(1) Unsafe.
(2) Unsanitary.
(3) Constitutes maltreatment or neglect of the animal.
(4) Allows the escape of the animal.

(e) An application must include an outline of the educational program that includes an explanation of the legal acquisition of the wild animal. A permit shall not be issued unless the proposed educational program meets the following criteria:
(1) Promotes the survival and role of wild animals in their natural habitat.
(2) Promotes an understanding of the ecological needs of wild populations of the species.
(3) Does not promote or encourage opposition to the scientific management of wildlife, including the regulated taking of wild animals in a manner consistent with state or federal law.

(f) An animal must not be displayed as part of or to promote a commercial venture or in a manner that might cause a member of the public to reasonably confuse the display with a commercial venture. A person must not use an animal for commercial or for-profit purposes. A person must not use an animal to draw attendance to or promote a commercial undertaking or activity, such as a convention, sports show, or similar activity.

(g) An animal must not be placed in physical contact with the public.

(h) A migratory bird must not be used unless the U.S. Fish and Wildlife Services also issues a special purpose possession permit. If the terms of the federal permit and the permit under this section differ, the more restrictive terms govern.

(i) A permit holder must not maintain or display a wild animal in a manner that does any of the following:
(1) Poses a hazard to public safety.
(2) Poses a hazard to property of a person other than the permit holder.
(3) Harms the health of the wild animal.
(4) Violates this article or the permit under which the animal is possessed.

(j) The permit issued under this section must be carried on the permit holder and displayed when conducting any authorized activities.

(k) The permit holder must file an application by February 1 of each year in order to renew the permit. The annual report shall accompany the renewal application. The report must contain the following:
(1) Numbers and species of wild animals used.
(2) Location of each program.
(3) Date of each program.
(4) Name of the group to whom the program was given.

(l) A copy of the records relative to this permit must be kept on the premises of the permit holder for at least two (2) years after the expiration date of the permit. Upon request by a conservation officer, the permit holder must provide these records.

(m) A license may be suspended, denied, or revoked under IC 4-21.5 if the permit holder does any of the following:
(1) Fails to comply with a provision of a permit issued under this section.
(2) Possessed the wild animal in a manner that constitutes maltreatment or neglect of the animal.
(3) Violates any applicable state, local, or federal law.
(Natural Resources Commission; 312 IAC 9-10-9.5)

SECTION 27. 312 IAC 9-10-10, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-10 Hunting permit for persons with disabilities
Authority: IC 14-11-2-1; IC 14-22-2-6
Affected: IC 14-22

Sec. 10. (a) The department may issue a permit under this section to a ~~handicapped individual~~ **person with a disability** to take wildlife, if the ~~handicap~~ **disability** would otherwise make the taking of wildlife by the individual difficult or impossible. The permit applies from August 15 through the last day of the

wild turkey hunting season established under 312 IAC 9-4-11.

(b) A permit application under this section shall be made as follows:

(1) The initial application shall be made on a departmental form and delivered to the division by July 1 for the current year hunting season. The application form may be obtained from the division beginning on May 1 of each year.

(2) The initial application must be accompanied by a statement of disability completed by a physician.

(3) **The division shall review** each completed application. ~~is reviewed by the division.~~ The director may issue a permit under this section by August 1 of each year. If an application is not recommended for approval, the applicant ~~will~~ **shall** be notified by mail.

(4) Except as otherwise provided in this subdivision, no renewal application is required for a ~~handicap~~ **person with disabilities hunting** permit. An applicant with a temporary ~~handicap~~ **disability** may be required by the division to submit, on an annual basis, additional documentation from a physician and a renewal application.

(c) A person issued a permit under this section may hunt wild animals from a stationary motor driven conveyance subject to the following restrictions:

(1) The permit holder must abide by all other hunting laws.

(2) The permit holder must possess a valid hunting license and the permit issued under this section.

(3) The permit holder must obtain in advance the permission of the manager of public property (local, state, or federal) to gain vehicular access to lands or roads that are otherwise closed to vehicular traffic.

(4) The permit holder may display a windshield identification placard supplied by the division of fish and wildlife while hunting from a vehicle. The placard must be displayed in such a way as to be visible from at least fifty (50) feet.

(d) An individual may be designated to assist a person issued a permit under this section in the retrieval of wild game harvested by the permit holder.

(e) The director may waive other provisions of 312 IAC 9-3 for an individual permit holder. The use of a crossbow may be specially authorized during archery season for hunting deer. *(Natural Resources Commission; 312 IAC 9-10-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2731; filed May 28, 1998, 5:14 p.m.: 21 IR 3729; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 28. 312 IAC 9-10-13.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-10-13.5 Special purpose salvage permit

Authority: IC 14-11-2-1; IC 14-22-2-6
Affected: IC 4-21.5; IC 14-22

Sec. 13.5. (a) This section governs a special purpose salvage permit. The permit is available only to a person who is at least one (1) of the following:

(1) A licensed rehabilitator.

(2) A nature center, nonprofit organization, or educational institution.

(3) An individual employed or sponsored by an educational institution.

(b) An application must be made on a departmental form and include the purpose for salvaging a wild animal. Approval may be given to use an animal for food, science, education, or a similar purpose.

(c) A special purpose salvage permit may be issued to salvage a wild animal, which is a mammal, reptile, amphibian, or bird, found dead. The applicant must not have participated in the death of the animal.

(d) An animal must not be salvaged for any other reasons than for the purpose stated on the permit or used as part of or to promote a commercial venture.

(e) The permit holder must tag each animal, and the tag must remain attached to the specimen until disposed of under this section. A tag shall have the following information:

(1) Date and county in which the specimen was salvaged.

(2) Name of the person who salvaged the specimen.

(f) The permit holder must carry and display a copy of the permit while conducting activities and salvage only within a county approved by the permit. The permit holder must obtain permission from the landowner or from a public land property manager before salvaging an animal on public land.

(g) Within six (6) months after acquisition or by the end of the calendar year, whichever is earlier, the permit holder must deposit any animal salvaged at a location approved on the permit. Any unused animal must be delivered to a conservation officer.

(h) A permit is also required from the U.S. Fish and Wildlife Service to salvage a migratory bird, their parts, nests, or eggs. If the terms of the federal permit and a permit issued under this section differ, the more restrictive terms govern.

(i) The permit holder must file an application by February 1 of each year in order to renew a permit. By February 1 of the year following expiration of a permit, the permit holder must provide the division with a listing of each animal salvaged and the date and location where salvaged. A copy of the records of animals salvaged must be kept on the premises of the permit holder for at least two (2) years

after the specimen is obtained. Upon the request of a conservation officer, a copy these records must be provided.

(j) The validity of this permit is conditioned upon observance of federal, state, and local laws.

(k) A license may be suspended, denied, or revoked under IC 4-21.5 if the permit holder fails to comply with this article, IC 14-22, or a permit issued under this section. *(Natural Resources Commission; 312 IAC 9-10-13.5)*

SECTION 29. 312 IAC 9-10-17, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-17 Aquaculture permit
Authority: IC 14-22-2-6
Affected: IC 14-22-27

Sec. 17. (a) A person must not import, raise, sell, or transport fish into or within Indiana without an aquaculture permit issued under this section, except as provided in:
(1) sections 14 through 15 of this rule; or
(2) subsection (b).

(b) A permit is not required under this section by a person who possesses fish, other than those listed in 312 IAC 9-6-7, and who is engaged in either of the following:
(1) The production, importation, or sale of live fish exclusively for use in the aquarium pet trade.
(2) The importation of live fish exclusively for confinement and exhibition in a zoo or another public display.

(c) An application for an aquaculture permit shall be prepared on a department form. The director may attach any appropriate conditions to a permit. The permit expires on December 31 of the year of issuance.

(d) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport triploid grass carp is based on the following conditions:
(1) No stocking of triploid grass carp may take place in public waters except as provided in IC 14-22-27.
(2) The ~~permit holder~~ **seller** must deliver and stock the fish.
(3) A copy of each bill of sale and triploidy certification must be conveyed to each buyer and must be retained by the permit holder for two (2) years.
(4) A purchaser of triploid grass carp must retain the bill of sale and the triploidy certification for at least two (2) years.
(5) A permit holder must submit a quarterly report on a departmental form not later than the fifteenth day of the month following the end of a quarter, regardless of whether fish have been stocked during the time period.
(6) Fish holding facilities, stocking reports, stocking trucks, other documents required under this subsection, and live fish may be inspected at any reasonable time by the division or a conservation officer. Not more than six (6) fish from a lot or truck load may be removed by the department for verification of the chromosome number.
(7) As used in this subsection and subsection (e), "triploid grass carp" means grass carp certified to be triploid by the U.S. Fish and Wildlife Service.

(e) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport diploid grass carp is based on the following conditions:
(1) No stocking of diploid grass carp may take place in any public or private waters except as provided in this subsection and IC 14-22-27.
(2) A live diploid grass carp may be possessed only for the purpose of producing triploid grass carp or producing diploid grass carp capable of producing triploid grass carp.
(3) A diploid grass carp may be sold only to a person who holds a valid aquaculture permit.
(4) All diploid grass carp must be held in a closed aquaculture system.
(5) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must submit an annual report to the division on a department form.
(6) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must be capable of accurately determining the number of sets of chromosomes of the fish in the possession of the permit holder under certification procedures of the U.S. Fish and Wildlife Service.
(Natural Resources Commission; 312 IAC 9-10-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2736; filed May 28, 1998, 5:14 p.m.: 21 IR 3730; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1541; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

SECTION 30. 312 IAC 9-11-1, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-11-1 Applicability
Authority: IC 14-11-4-5; IC 14-11-4-9; IC 14-22-26
Affected: IC 14-11-4; IC 14-22-26-2

Sec. 1. (a) Except as provided in IC 14-22-26-2 or as exempted under subsections (d) and (e), a person must have a permit issued by the department under this ~~section~~ **rule** to possess a wild animal if the wild animal is either of the following:
(1) Referenced in this rule.
(2) Listed in this article as an endangered species or a threatened species.

(b) A separate permit is required for each individual wild animal and applies only to the location stated in the permit.

(c) A permit issued under this rule expires one (1) year from the date of issuance. If a timely and sufficient application is made for a permit renewal under section 3 of this rule, however, the permit does not expire until the department has entered a

final determination with respect to the renewal application.

(d) A wild animal that is possessed under any of the following licenses is exempted from this rule:
(1) A game breeder license issued under 312 IAC 9-10-4.
(2) A scientific collector permit issued under 312 IAC 9-10-6.
(3) A mammal or bird rehabilitation permit issued under 312 IAC 9-10-9.

(e) This rule does not apply to the lawful taking or possessing of a wild animal as follows:
(1) During a season established under this article.
(2) During the first six (6) months from the date of birth, if the animal is the offspring of a wild animal lawfully possessed under this rule.
(3) **The mammal is possessed** by ~~zoos, carnivals, menageries, animal dealers, pet shops, circuses, or nature centers~~ **a zoo, carnival, animal dealer, pet shop, circus, or nature center** licensed under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
(4) During the interstate shipment of animals through the state of Indiana.
(5) As authorized by a permit issued by the U.S. Department of the Interior.

(f) A person who possesses a wild animal is responsible for complying with all applicable requirements of this rule, including those which govern permit renewals and permit site relocations.

(g) A person who possesses a wild animal for which a permit is required under this rule, but who does not possess a permit, is subject to the standards, requirements, and sanctions of this rule. *(Natural Resources Commission; 312 IAC 9-11-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2737; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 31. 312 IAC 9-11-2, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-11-2 First permit to possess a wild animal
Authority: IC 14-22-26
Affected: IC 14-11-4; IC 14-22

Sec. 2. (a) This section governs the first permit under this rule to possess a particular wild animal.

(b) A person who ~~possesses~~ **wishes to possess** a wild animal, described as Class I or Class II under section 5 of this rule, must ~~apply to the department for~~ **obtain** a permit under this rule ~~within five (5) days after acquiring~~ **before the person takes possession of** the animal.

(c) A person who wishes to possess a wild animal, described as Class III, must satisfy IC 14-11-4 and ~~receive~~ **obtain** a permit under this rule before the person takes possession of the animal. In addition to any procedural requirements, a notice under this subsection must also describe the following:
(1) The species of the wild animal.
(2) Where the animal will be possessed.
(3) The type of enclosure ~~which~~ **that** would be used.

(d) A permit application must include a written verification from a licensed veterinarian that the animal appears to be free of disease, appropriately immunized, and in good health.

(e) An application must present a plan for the quick and safe recapture of the wild animal if the animal escapes or, if recapture is impracticable, for the destruction of the animal. After notification by the department of an intention to issue a permit, but before the permit is issued, the applicant must obtain the equipment needed to carry out the recapture and destruction plan. The nature and extent of the recapture plan and the equipment needed are dependent on the danger the escaped animal poses to persons, domestic animals, livestock, and other wildlife in the vicinity of the escape.

(f) A permit ~~to possess~~ **holder who possesses** a Class III wild animal ~~shall require the permit holder to~~ **must** notify the department immediately after the discovery of any escape of the animal.

(g) A permit application must be completed on a department form and accompanied by a fee in the amount of ten dollars ($10).

(h) A conservation officer ~~will~~ **shall** inspect the cages or enclosures after the application is received.

(i) An application must show the wild animal was lawfully acquired. A receipted invoice, bill of lading, or other evidence approved by the director shall accompany the application to establish compliance with this subsection. *(Natural Resources Commission; 312 IAC 9-11-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2738; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 32. 312 IAC 9-11-14, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-11-14 Maintaining a wild animal possessed under this rule
Authority: IC 14-22-26
Affected: IC 14-22

Sec. 14. (a) A person must not maintain a wild animal in a manner that does any of the following:
(1) Poses a hazard to public safety.
(2) Poses a hazard to property of a person other than the ~~permittee.~~ **permit holder.**
(3) Harms the health of the wild animal.

(4) Violates this article or the license under which the animal is possessed.

(b) A person must not possess a wild animal in a condition that is any of the following:
(1) Unsafe.
(2) Unsanitary.
(3) Constitutes maltreatment or neglect of the animal.
(4) Allows the escape of the animal.

(c) A person must not use a wild animal in any of the following manners:
(1) For a commercial purpose unless the person is issued a commercial license by the United States Department of Agriculture or the wild animal is an alligator snapping turtle (Macroclemys temmincki) lawfully acquired by the applicant prior to January 1, 1998.
(2) For a sporting purpose.
(3) As a public display.

(d) ~~If~~ **A special purpose educational permit must be obtained under 312 IAC 9-10-9.5 before a person uses** a **Class I,** Class II, or Class III wild animal ~~is used~~ for an educational purpose **or** the **wild** animal ~~must be confined in a cage that prevents contact with the public.~~ **is an alligator snapping turtle (Macroclemys temmincki) lawfully acquired by the applicant prior to January 1, 1998.**

(e) A wild animal must be provided with fresh drinking water in clean containers on a daily basis.

(f) A swimming pool or wading pool ~~which~~ **that** is provided for the use of a wild animal must be cleaned as needed to maintain good water quality.

(g) Surface water must be adequately drained from a cage or enclosure where a wild animal is possessed.

(h) A wild animal must be provided with food that is each of the following:
(1) Unspoiled.
(2) Uncontaminated.
(3) Appropriate to the dietary needs of the animal.

(i) Fecal wastes and food wastes must be removed daily from cages and stored or disposed to prevent noxious odors and insect pests. Hard floors shall be scrubbed and disinfected weekly. Large pens and paddocks with dirt floors shall be raked at least once every three (3) days and the waste removed. *(Natural Resources Commission; 312 IAC 9-11-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2743; filed May 19, 2003, 9:11 a.m.: 26 IR 3324; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

SECTION 33. 312 IAC 9-4-7 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 25, 2004 at 5:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning ice fishing, deer hunting, commercial processing of deer, beavers, foxes, coyotes, skunks, minks, muskrats, long-tailed weasels, opossums, raccoons, squirrels, Hungarian partridges, ruffed grouse, wild turkeys, endangered species of birds, amphibians, reptiles, turtles, endangered species of fish, sport fishing, largemouth bass, trout, special purpose salvage permits, aquaculture permits, and wild animal possession permits. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #03-67

DIGEST

Adds 326 IAC 2-2.2 concerning clean unit designations in attainment areas, 326 IAC 2-2.3 concerning pollution control project exclusion procedural requirements in attainment areas, 326 IAC 2-2.4 concerning actuals plantwide applicability limitations in attainment areas, 326 IAC 2-2.6 concerning federal NSR requirements for sources subject to P.L.231-2003, SECTION 6, 326 IAC 2-3.2 concerning clean unit designations in nonattainment areas, 326 IAC 2-3.3 concerning pollution control project exclusion procedural requirements in nonattainment areas, and 326 IAC 2-3.4 concerning actuals plantwide applicability limitations in nonattainment areas. Amends 326 IAC 2-1.1-7 concerning permitting fees, 326 IAC 2-2-1 concerning definitions relating to PSD requirements, 326 IAC 2-2-2 concerning applicability of PSD requirements, 326 IAC 2-2-3 concerning requirements for control technology review, 326 IAC 2-2-4 concerning requirements for an air quality analysis, 326 IAC 2-2-5 concerning requirements relating to an air quality impact, 326 IAC 2-2-6 concerning requirements for increment consumption, 326 IAC 2-2-7 concerning requirements for additional analysis, 326 IAC 2-2-8 concerning source obligations, 326 IAC 2-2-10 concerning source information, 326 IAC 2-3-1 concerning definitions relating to emission offsets, 326 IAC 2-3-2 concerning applicability of emission offsets, 326 IAC 2-3-3 concerning applicable

requirements, 326 IAC 2-5.1-4 concerning transition procedures, 326 IAC 2-7-10.5 concerning source modifications relating to Part 70 permits, 326 IAC 2-7-11 concerning administrative permit amendments, and 326 IAC 2-7-12 concerning permit modifications. Repeals 326 IAC 2-2.5. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2003, Indiana Register (26 IR 2473).

Second Notice of Comment Period: September 1, 2003, Indiana Register (26 IR 3962).

Notice of First Hearing: September 1, 2003, Indiana Register (26 IR 4030).

Change in Notice of First Hearing: December 1, 2003, Indiana Register (27 IR 905).

Date of First Hearing: January 7, 2004.

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.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on September 1, 2003, at 26 IR 3962. By this notice, the Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

In addition, IDEM feels a third comment period is appropriate due to the high level of interest in the proposed rule. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#03-67(APCB) NSR Reform
Christine Pedersen
c/o Administrative Assistant
Rule Development Section
Office of Air 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 Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by March 22, 2004.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2003, through October 1, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

ALCOA Warrick Operations (ALCOA)
American Electric Power (AEP)
CASE Coalition (CASE)
Cinergy Power Generation Services, LLC (CPG)
Citizens Action Coalition of Indiana (CAC)
DaimlerChrysler Corporation (DCC)
Dominion (DOM)
Eli Lilly and Company (ELC)
Hoosier Environmental Council (HEC)
Indiana Cast Metals Association (INCMA)
National Starch & Chemical (NSC)
Northern Indiana Public Service Company (NIPSCO)
Partners for Pollution Prevention (PPP)
Save the Dunes Council (SDC)
Save the Valley (STV)
Trinity Consultants (TRI)
Valley Watch, Inc. (VWI)

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

General Rulemaking Comments

Rulemaking effort

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. We urge IDEM to go further and recognize that the rule is expected to have beneficial effects in reducing air emissions through implementation of the clean unit test, PALs, and pollution control project exclusions as well as the actual-to-projected-actual emissions test. IDEM should adopt all elements of the federal rule. (CASE)

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. (ALCOA)

Comment: We appreciate the efforts of the Office Air Quality to promulgate the federal NSR reform rules as quickly as possible. In addition, we generally support IDEM's direction of adopting the federal rules with few differences. (ELC)

Comment: We support IDEM's efforts to implement the federal reforms. We urge IDEM to expeditiously approve these rules and submit the revised rules as state implementation plan (SIP) revisions. (DOM)

Comment: We support IDEM's initiative to expeditiously incorporate the revisions to the U.S. EPA rules into the state regulations in an essentially unchanged fashion, except for those cases where existing state requirements necessitate the U.S. EPA NSR rules be structured to avoid anti-backsliding concerns. (AEP)

Comment: We support the December 2002 final rule, as well as IDEM's efforts to expeditiously revise its state implementation plan. (DCC)

Response: IDEM acknowledges the support and intends to proceed with the rulemaking expeditiously.

Comment: The rules should be incorporated by reference with a few issues dealt with through separate rulemakings if needed. We are concerned that straying from the identified requirements of the federal rule will result in a significant delay in the adoption and implementation of these reforms. There is no clear guidance from U.S. EPA regarding the latitude states have to stray from the specific provisions of the federal rule. Implementation of these reforms may be significantly delayed if U.S. EPA will not approve the rules. We support a two-phase approach: adoption of the federal rule without modification to insure federal approval, followed by adoption of any modifications believed to enhance the rule. (INCMA)

Response: IDEM is working with U.S. EPA to assure the revised

rules can be approved into the SIP. U.S. EPA has informally commented on the second notice, and IDEM has revised the language to address U.S. EPA concerns. U.S. EPA, Region V also sent the language to U.S. EPA Headquarters, since Indiana is one of the first states to submit revised rule language. Due to the extensive federal review prior to finalizing this rule, IDEM does not believe the state level changes will slow down the SIP approval process.

Comment: We believe it is premature for IDEM to proceed with this rulemaking because the Bush administration's NSR rollbacks are being challenged in court. If the litigation challenging the federal rollbacks is successful, Indiana residents would receive less protection than under the current rules until the current rules could be restored. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM is monitoring the legal challenge. If the legal challenge results in changes to the federal rule prior to final adoption, IDEM will consider those changes in the state rulemaking. The December 31, 2002 federal rule revisions require states with SIP approved major NSR programs to submit SIP revisions to U.S. EPA by January 2, 2006. IDEM must continue moving forward with this rulemaking to assure compliance with that requirement.

Conformity between federal and state NSR rules

Comment: Significant variations between state and federal NSR regulations, and among various state programs, are problematic for efficient business planning, particularly for a company with operations in many states. Variations create potential confusion for the public who will not be able to rely on one set of rules. If the state NSR rules are different, there would be delays and possible confusion when using any U.S. EPA guidance on the new NSR reform rules. Interstate differences with NSR will create an uneven set of requirements and may affect important company decisions related to manufacturing capacity and ultimately the location of jobs in the U.S. We support uniformity in regulations at the state and federal levels to the maximum possible extent. We recommend that IDEM adopt rules that are consistent with the federal rules unless the differences are clearly justified by environmental reasons unique to Indiana. (DCC)

Response: Consistency in air permit regulations is important. Indiana has proposed to adopt all of the federal provisions with a few revisions to prevent backsliding of air quality. While there is consistency in major NSR programs, there is not consistency in the various minor NSR programs. Because the new major NSR provisions rely heavily on state and local minor programs, some variation is likely to occur. IDEM anticipates developing training materials for NSR to clarify the changes to the program.

Equipment replacement provision

Comment: We encourage IDEM to revise this proposal to include the elements of the Routine Maintenance Repair and Replacement rule revisions to the NSR program signed by U.S. EPA Administrator Horinko on August 27, 2003 within this rulemaking instead of placing them in a separate rulemaking that will lag this rulemaking by only a few months. We believe it would be efficient for IDEM to make those changes prior to taking this revision to the APCB in February 2004. We encourage IDEM to make those changes at this time and not wait. We do not believe the expense and time required for an additional rulemaking is justified. (AEP)

Comment: The rules as proposed are only based on the language of the final U.S. EPA NSR reform rule of December 31, 2002 and additional IDEM modifications. An integral part of the NSR reform effort includes the revisions and clarifications provided to the regulated community for routine maintenance, repair and replacement by the August 27, 2003 final U.S. EPA rule. This RMRR rule must be included in the IDEM rule as expeditiously as possible to provide the affected parties with the regulatory reforms needed to operate efficiently. We recommend IDEM include the provisions of the RMRR rule, as signed by the acting U.S. EPA administrator on August 27, 2003, in this rulemaking. (NIPSCO)

Comment: We encourage IDEM to incorporate by reference the language from the signed version of the amendments to 40 CFR 51.165 and 40 CFR 52.21, Prevention of Significant Deterioration and Nonattainment New Source Review: Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion. (CPG)

Response: The federal Equipment Replacement Provision (ERP) rulemaking, which was not published until October 27, 2003, was not included in the First Notice of this rulemaking, which was published on April 1, 2003. In order to properly include the ERP provision into this rulemaking, IDEM would need to republish a First Notice of Comment Period and begin the process over. In addition, IDEM and the public need time to review the new ERP regulation to evaluate its impact on air quality in Indiana. The current rulemaking, based on the December 31, 2002, U.S. EPA final rule, must continue as scheduled to assure that Indiana meets the January 2, 2006 requirement for a SIP submittal. There are several more phases of NSR Reform expected to be finalized in the *Federal Register* this year; it is not necessary to delay the parts already published in anticipation of future rules. IDEM has begun the public discussion on the ERP rule and will work with all interested parties on that issue in a second rulemaking.

Federal criteria for approving alternatives

Comment: In relation to federal criteria for approving alternatives, we encourage IDEM to begin with federal baseline language in rulemaking to gain acceptance and consider modifying language for the state later. (INCMA)

Response: Development of the draft rule language for the state rulemaking began by determining how the new federal language fit into the existing SIP approved rules. Changes are being recommended based on protecting air quality in Indiana and consistency with existing state programs. These changes have been discussed with U.S. EPA to assure they can be approved. U.S. EPA made it clear in the December 31, 2002 preamble that state and local agencies "have the freedom to customize their NSR program" as long as they meet the requirements of Part 51 "with different but equivalent regulations." (67 FR 80241, Section VII on p. 80241, col. 2 of the December 31, 2003 Federal Register)

No increases in total emissions

Comment: An underlying principle that must guide any proposed changes to Indiana's NSR rules is that no change results in increased total emissions or authorizes increased emissions when compared with the current NSR rules. IDEM's proposed rules must not allow backsliding in Indiana's efforts to achieve cleaner air. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees, and has made the adjustments to assure no backsliding in the quality of air in Indiana. For example, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants, including mercury, under the PSD program. In addition, IDEM is recommending a change to the retroactive designation of clean units because the federal provision would result in greater air emissions than the current state program in a manner that is not consistent with the goals of the CAA.

SIP changes

Comment: IDEM must ensure that SIP changes do not interfere with attainment of an air quality health standard. The Clean Air Act (CAA) prohibits modification of clean air programs in effect before the CAA Amendments of 1990 unless the modification results in equal or greater emission controls. The CAA also prohibits backsliding with regards to emission standards or limitations in SIPs. IDEM has stated that some

of the rule changes could in fact result in some emission increases. This would be a violation of Sections 193 and 116 of the CAA. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM has maintained existing provisions or revised the new federal rules to prevent backsliding of air quality in Indiana. With the revisions that have been proposed, IDEM does not believe there will be an actual increase in emissions over what would have been allowed under the current state rules. Under some of the new provisions, such as the PAL, there may be a decrease.

Title V revision procedures

Comment: IDEM proposes specific revision procedures to address clean unit designations, listed PCPs, non-listed PCPs and PALs. We support IDEM's approach to use minor modification procedures for clean units and listed PCPs and to use significant modification procedures for non-listed PCPs and PALs. (CASE) (ALCOA)

Response: IDEM agrees that these approaches make sense.

Federally enforceable

Comment: We believe the phrase "federally enforceable" should never be used in the Indiana rules because it is inconsistent with three significant court rulings in 1995 that found U.S. EPA had not provided adequate justification for requiring federal enforceability. U.S. EPA provided no new justification for using federal enforceability in response to the court rulings in the preamble to the final rules. Instead, U.S. EPA only offers that the 1995 court rulings held that it was impermissible to require federal enforceability as an element of defining "potential to emit", and that other uses of the concept are still permissible. This approach ignores the merits of the 1995 court rulings.

We believe it does not jeopardize Indiana's ability to obtain SIP approval for its NSR programs. Indiana should not agree to include the phrase in its rules unless U.S. EPA justifies the use of federal enforceability in each instance where it is used in the major NSR rules. (ELC)

Response: The court rulings removed the term "federally enforceable" from the definition of potential to emit. The federal rules that are the subject of this rulemaking include the term "federally enforceable" and were promulgated after the lawsuits. It appears that U.S. EPA considered the lawsuit when drafting the revisions because the term "enforceable as a practical matter" is also included along with nearly every new reference to the term "federally enforceable".

IDEM has removed the term "federally" from uses of the term "federally enforceable" in the definitions of "allowable emissions" and "potential to emit" to be consistent with the PSD definitions and because court decisions in 1995 vacated the requirement (Nat. Mining Assoc. v. U.S. EPA, 59 F.3d 1351 (D.C. Cir. 1995) and Chem. Manufacturer's Assoc. v. U.S. EPA, 70 F.3d 637, (D.C. Cir. 1995)). We do not have the authority to remove it from anything else.

Compliance consequences if actual emissions exceed projected emissions

Comment: We requested that the rule provide that BACT be retroactive to the date of the actual physical change, as opposed to BACT at the time of discovery. IDEM's response to this comment was non-responsive. It simply said this was an implementation and compliance issue that did not need to be addressed in the rule. That is not correct. The rule must provide guidance to both the regulated entity and to IDEM so when enforcing its requirements the rule actually provides BACT at the time of the physical change or BACT at the time of discovery that BACT should have applied earlier. It is not acceptable for IDEM's Office of Enforcement to pick and choose what it will do. The rule must give direction for what IDEM's Office of Enforcement is to do.

We requested that the rule include the ramification or a list of the actions IDEM may take when a facility reports an exceedence of its projected actual emissions. IDEM's response was that the exceedence might be referred to enforcement. The rule needs to specifically state all the different actions IDEM may take and the basis for determining which action to take. For example, one action could be to enforce. But the rule should state what conditions make enforcement appropriate. Alternatively, an appropriate action could be to allow a specified period of time for the permittee to retest or provide a written report to explain other causes of the exceedence that are not related to the physical change made. (INCMA)

Response: IDEM cannot allow a source to apply BACT retroactive to the date of the physical change. The November 17, 1998, U.S. EPA memo titled "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements", states that the source must comply with the BACT or LAER determination made at the time a source goes through NSR permit review. Thus, if a source violates NSR in 2003 and applies for a permit in 2005, whatever technology is BACT or LAER in 2005 will be required in the permit.

Any violation of the permitting requirements will be handled by IDEM's Office of Enforcement in accordance with IC 13-30-3-1. The permitting rules contained in 326 IAC 2 explain the permitting procedures, but they are not designed to describe the enforcement procedures or specific enforcement consequences. Enforcement may be appropriate for any violation depending on many site specific issues thus making it improper to address in a rulemaking. Therefore, this will not be addressed in the NSR permit rules.

BACT and LAER clarification

Comment: Clarification should be provided as necessary in individual locations within the proposed new rule language that BACT applies in attainment areas and LAER applies in nonattainment areas. It should be acknowledged that a unit that meets LAER more than meets the requirements of BACT. For a unit seeking clean unit designation that meets LAER in an attainment area, it should be clearly acknowledged that such a unit more than satisfies the requirements for a clean unit designation. (NIPSCO)

Response: The applicability of the PSD requirements in 326 IAC 2-2 in attainment or unclassified areas is stated in 326 IAC 2-2-2(b). As part of the PSD rules, the BACT requirements in 326 IAC 2-2-3 are understood to apply in attainment or unclassified areas. Likewise, 326 IAC 2-3-2(a) indicates that the emission offset rules of 326 IAC 2-3 apply in nonattainment areas, therefore the LAER requirements in 326 IAC 2-3-3(a)(2) apply in nonattainment areas. Further clarification in the rule is unnecessary.

IDEM agrees that a unit that received a permit requiring LAER should continue to qualify for a clean unit designation when its area is redesignated attainment. The phrase "or LAER" has been added in several subsections of 326 IAC 2-2.2-1 and 326 IAC 2-2.2-2 that were not included in the federal rule to clarify this intent.

Clarification of references to P.L. 231-2003, SECTION 6

Comment: We believe it would be appropriate to provide a clarification or description of P.L. 231-2003, SECTION 6, and where copies may be obtained. (NIPSCO)

Response: For clarification, IDEM has changed the rule title to read, "Federal NSR Requirements for Sources Subject to P.L. 231-2003, SECTION 6, Endangered Industries". In addition, the draft rule incorrectly identified this public law as "P.L. 231-0003"; this has been corrected to "P.L. 231-2003".

P.L. 231-2003, SECTION 6, passed by Indiana legislators in 2003, prohibits the environmental boards from adopting a new rule before July 1, 2005, that would require certain industries to comply with standards of conduct that exceed federal standards. In the draft rule, 326 IAC 2-2.6 has been added to comply with this legislation.

This new Indiana law can be found on the internet at

http://www.in.gov/legislative/pdf/acts_2003.pdf. It will also be available in the Indiana Legislative Counsel Acts 2003 when published. IDEM will provide copies upon request.

Compliance certifications under Nonrule Policy Document

Comment: IDEM has indicated that it plans to revise the Nonrule Policy Document regarding Title V annual compliance certifications to require that a permittee include exemptions from NSR in its annual certification. IDEM needs to provide that language in the rules so that stakeholders can review and have input on this change. (INCMA)

Response: IDEM does not believe it is necessary to revise the rule. The language in 326 IAC 2-7-6(5)(C)(v) already states "Such other facts as the commissioner may require to determine the compliance status of the source." IDEM inspectors need this information to verify compliance. IDEM will provide clarification in the Annual Compliance Certification Non-Rule Policy Document. When the Non-Rule Policy Document is revised, there will be an opportunity for public review and comment.

Fees

Comment: We support the idea that IDEM should be able to collect fees for new review functions created by the NSR reform rules, such as a technology review to obtain a clean unit designation or establishing PAL permits. In addition, we recognize the difficulty of developing fair and equitable fee rates that will enable IDEM to collect some funds to offset its expenses. However, we believe the proposed fees for establishing a PAL are too high. We recognize that establishing PAL permits can be resource intensive. But the idea that establishing a PAL permit for a complex manufacturing facility is automatically a resource intensive activity is too simplistic. PAL fees should not reflect the complex regulatory requirements already applicable to a facility. We recommend either the emission fee rate in dollars per ton be lower or the PAL fees be based on the number of emission sources that have to be evaluated and monitored. In the alternative, the rules could establish an overall cap for fees, such as $50,000.

In addition, the proposed rules appear to impose the same fees when a PAL is reestablished after 10 years. Although the PAL rules call for a reevaluation of the PAL levels when reissuing a PAL permit, the level of effort to conduct this review will not be as extensive. The fees for reestablishing a PAL permit should be significantly lower than establishing the permit. (ELC)

Comment: The fee provisions for a PAL are too high. At $40 per ton, this would discourage companies from applying for a PAL. The fee should be lowered or adjusted to less than $40,000 per pollutant cap if a source requests a PAL for more than one pollutant. (INCMA)

Response: After further review, IDEM believes that a maximum fee of $40,000 is reasonable. The language in 326 IAC 2-1.1-7(3)(F)(iii) has been changed to reflect this.

There is no requirement in the rules for a renewal fee for a PAL. Major sources do pay annual operating fees which should cover the cost of reevaluating a PAL at the end of a permit term.

Attainment and unclassifiable areas

Comment: The proposed revisions in 326 IAC 2-2-2(b) reference attainment and unclassifiable areas as specified in sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act. The proposed language shows the deletion of the current reference to the listing of attainment and unclassifiable areas in 326 IAC 1-4. This is inconsistent with the proposed language of 326 IAC 2-2-2(g) which retains the reference to 326 IAC 1-4 for nonattainment areas, not references to the Clean Air Act. We would appreciate a clarification on why the references to the CAA are used for the attainment/unclassifiable portions while the nonattainment area references are to 326 IAC 1-4. (NIPSCO)

Response: IDEM agrees that the reference regarding nonattainment areas should be 326 IAC 1-4, not the CAA. This change has been made in 326 IAC 2-2-2(b).

Annual emission information

Comment: In 326 IAC 2-2-8(b)(4) and 326 IAC 2-2-8(b)(5), we question the need to have the owner or operator provide the listed annual emission information within 60 days of the end of the year. The information is included in the annual emission statement that is provided by the owner or operator to IDEM as specified in the schedule in the emissions reporting rule. Submittal of the information in the time period listed in this proposed rule is unnecessarily in advance of the annual emission statement submittal deadline and duplicative of the efforts and information provided in the annual emission statement. We recommend the submittal deadline proposed in this provision be changed to coincide with the deadline of the emission reporting rule to prevent imposition of an unnecessary early reporting burden on the regulated community. (NIPSCO)

Response: The reports required by the source obligation sections of 326 IAC 2-2 and 326 IAC 2-3 are specific to the modification. The source obligation requires the reports to be submitted within 60 days of the end of the calendar year. This reporting date is from the new federal rules at 40 CFR 51.166(r)(6) and 40 CFR 52.21(r)(6). A separate state rule, the emission reporting rule at 326 IAC 2-6, applies to the entire source and requires the annual emission statements on July 1 of each year. The scope of the NSR rulemaking does not allow for changes to be made to the emission reporting rule through this rulemaking.

Hydrogen fluoride

Comment: We recommend that Indiana's rules include explicit language to ensure there is no confusion about whether hydrogen fluoride should be excluded from the emission estimates for fluorides. 326 IAC 2-2-1(xx)(L) should be amended to read, " (L) Fluorides **(excluding hydrogen fluoride)**: three (tons per year);"

In addition, we recommend hydrogen fluoride should be excluded from the ambient impact analysis for fluorides that is required to determine whether preconstruction monitoring and other ambient impacts are needed. 326 IAC 2-2-4(b)(2)(A) should be amended to read: "(L) Fluorides **(excluding hydrogen fluoride)**: 0.25 $\mu g/m^3$, 24-hour average;"

(ELC)

Response: IDEM recommends that the rule continue to regulate the hazardous air pollutants that are specifically listed under the definition of "significant" in 326 IAC 2-2-1(xx). U.S. EPA has apparently chosen to delete hydrogen fluoride from the list of pollutants regulated by the PSD program because it will also be regulated by a NESHAP under Section 112 of the Clean Air Act. One of the uses of this highly corrosive acid is to etch glass. Indiana's PSD program regulates fluorides, including hydrogen fluoride, at major sources or modifications if emissions are above three tons per year. Section 112 does not typically regulate pollutants at levels less than ten tons per year. Hydrogen fluoride is a colorless gas that can cause severe respiratory damage with acute exposure and irritation and congestion of the nose, throat, and bronchi at low, chronic levels of exposure. IDEM has consistently recommended that the PSD program continue to regulate the specifically listed toxic air pollutants including, among others: asbestos, beryllium, mercury, and fluorides. Therefore hydrogen fluoride has not been excluded from fluorides in 326 IAC 2-2-1(xx)(L) and 326 IAC 2-2-4(b)(2)(A).

Definitions

Baseline actual emissions and projected actual emissions

Comment: The definitions of "baseline actual emissions" in 326 IAC 2-2-1(e) and 326 IAC 2-3-1(d), and "projected actual emissions" in 326 IAC 2-2-1(rr) and 326 IAC 2-3-1(mm), both include language

intended to address emissions from malfunctions, startups, and shutdowns if affected by a proposed project. The wording of these provisions could be clarified as follows:

- 326 IAC 2-2-1(e)(1)(A) and 326 IAC 2-2-1(e)(2)(A) should read: (A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
- 326 IAC 2-2-1(rr)(2)(A)(ii) should read: (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and
- 326 IAC 2-3-1(d)(1)(A) and 326 IAC 2-3-1(d)(2)(A) should read: (A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
- 326 IAC 2-3-1(mm)(2)(A)(ii) should read: (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and

(ELC)

Response: IDEM agrees that these emissions need only be included as they are affected by the project and has made appropriate changes in the draft rule. However, U.S. EPA has indicated that use of the phrase "to the extent quantifiable" would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase "to the extent quantifiable" from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).

Clean unit

Comment: The "clean unit" definition in 326 IAC 2-2-1(m) is unclear because it does not clearly identify if the unit has to meet all three of the items in 326 IAC 2-2-1(m)(1), or only one of 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), or 326 IAC 2-2-1(m)(1)(C), or if it only needs to meet one of the requirements of 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3). Clearer language would be appreciated. (NIPSCO)

Response: IDEM has adopted the definition of "clean unit" from the federal regulations at 40 CFR 51.166(b)(41), and has kept it unchanged. The format of this definition in 326 IAC 2-2-1(m) and 326 IAC 2-3-1(j) is the preferred format of the Legislative Services Agency (LSA) which controls this type of editing. IDEM will take this opportunity to clarify that a clean unit must meet one of the three provisions, 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3), because the term "one of the following" is used at the subsection level. To meet the requirements in subdivision 326 IAC 2-2-1(m)(1), the clean unit must meet all three of the items, 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), and 326 IAC 2-2-1(m)(1)(C), as indicated by the use of the term "and" within 326 IAC 2-2-1(m)(1).

Comment: In 326 IAC 2-2-1(m)(1)(B), it would be helpful if this language was more specific regarding the compliance with BACT or LAER. Since BACT and LAER vary over time, a clarification regarding the BACT or LAER at the time of submittal of the application is recommended. (NIPSCO)

Response: The phrase in 326 IAC 2-2-1(m)(1)(B), "…is complying with BACT or LAER requirements…", refers to the BACT or LAER requirements from the major NSR permit that requires compliance with BACT or LAER that is referred to in 326 IAC (m)(1)(A). IDEM has made a change to the language in 326 IAC 2-2-1(m)(1)(B) to clarify this meaning. IDEM also made a parallel change to the definition of "clean unit" in 326 IAC 2-3-1(j)(1)(B).

Net emissions increase

Comment: What was the justification for adding the language that an increase or decrease in actual emissions is creditable only if the increase or decrease occurs within a reasonable period as determined by the department? What are the criteria that will be used to establish a reasonable time? (INCMA)

Response: This was a mistake made when incorporating federal rule language from 40 CFR 51.166(b)(3)(iii)(*a*) into the state rule format. The reasonable period is the contemporaneous period provided in 326 IAC 2-2-2(jj)(2). IDEM has removed that particular language from the draft rule.

Pollution control project

Comment: The language in 326 IAC 2-2-1(ll) at the end of the third sentence "...through the PCP.2-2.3-1(c)(1)." is confusing. Was it intended to say "...through the PCP provisions of 326 IAC 2-2.3-1(c)(1)."? (NIPSCO)

Response: IDEM intended the language in the third sentence of 326 IAC 2-2-1(ll) to read, "…to reduce emissions through the PCP." IDEM has removed the rule cite, "2-2.3-1(c)(1)", at the end of the sentence because it was a typographical error.

Regulated NSR pollutant

Comment: IDEM states that it is modifying the definition of "regulated NSR pollutant" to include asbestos, beryllium, mercury and vinyl chloride. We object to inclusion of these pollutants in the federally enforceable section of the Indiana's PSD program because it is prohibited by the Clean Air Act (CAA). Section 112(b)(6) of the CAA clearly prohibits regulation of the pollutants IDEM proposes to regulate under the PSD program, each of which is a hazardous air pollutant listed in CAA §112(b). While Section 116 of the Clean Air Act provides that nothing prohibits a state from adopting and enforcing provisions that are more stringent than federal law, it does not authorize IDEM to make any state law it chooses federally enforceable, particularly where such is expressly prohibited by Section 112(b)(6). If IDEM wishes to regulate these pollutants, it must do so as a matter of state law only and not submit this aspect of the regulations for SIP approval. If IDEM wishes to obtain SIP approval for the regulation of these pollutants, it must show that such regulation is required to attain or maintain compliance with a NAAQS and that it does not conflict with the express prohibition under Section 112(b)(6). (CASE) (ALCOA)

Response: IDEM disagrees that the state program cannot include asbestos, beryllium, mercury and vinyl chloride. In addition, IDEM proposes to continue to regulate hydrogen fluoride with fluorides. When U.S. EPA removed them in the 1990 CAA Amendments, it allowed states to continue to regulate them (refer to March 11, 1991 John Seitz memo titled "New Source Review (NSR) Program Transitional Guidance"). This is not a change proposed in this rulemaking because these pollutants have always been included in the Indiana program. In addition, these pollutants were included in the Indiana program when U.S. EPA approved Indiana's PSD permitting rule into the state implementation plan on March 3, 2003. Therefore, the state rules concerning these pollutants are federally enforceable.

Comment: Under Indiana Code 13-14-9-4, IDEM is required in a notice of second public comment period to identify the environmental circumstance or hazard that dictates the imposition of a requirement that is not imposed under federal law and to provide examples where the federal law is inadequate to provide that protection along with the estimated fiscal impact and benefits. IDEM is also required to describe

the availability of material relied upon. IDEM did not provide this required information regarding its imposition of an additional requirement to include asbestos, beryllium, mercury and vinyl chloride under the NSR rules. (INCMA)

Response: IDEM disagrees that this information was required with this rulemaking. These pollutants were already in the existing SIP-approved rule. Retaining them does not create a new requirement nor does it create an additional fiscal impact, therefore this information did not need to be submitted with this rulemaking. In addition, not including them in this rulemaking would make Indiana's air quality program less protective of human health by eliminating provisions concerning pollutants that are well understood to be among the most toxic and that have been regulated by U.S. EPA as hazardous air pollutants for years.

Comment: In 326 IAC 2-2-1(uu)(1), the language is vague and needs clarification. It appears the intent of this subdivision is to include constituents or precursors of the pollutants for which a national ambient air quality standard (NAAQS) has been promulgated by U.S. EPA. The following language is recommended to provide this clarification consistent with the presumed intent:

(1) Any air pollutant for which a national ambient air quality standard (NAAQS) has been promulgated and any U.S. EPA identified constituents or precursors of a NAAQS pollutant.

(NIPSCO)

Response: The language was taken from the federal rules at 40 CFR 51.166(b)(49) and 40 CFR 52.21(b)(50). IDEM prefers to follow the federal definitions where possible and does not feel that clarification is necessary in this case. The use of the term "the pollutants" in the second half of the sentence in 326 IAC 2-2-1(uu)(1) refers to "any pollutant for which a national ambient air quality standard has been promulgated" from the first part of the sentence; therefore, it is clear that the subdivision includes constituents or precursors of the pollutants for which a national ambient air quality standard has been promulgated.

Comment: The provision in 326 IAC 2-2-1(uu)(5) is unclear. The inclusion of the cross reference to "any pollutant listed in subsection (xx)" is a circular reference because 326 IAC 2-2-1(xx)(1)(V) refers to "Any regulated NSR pollutant", the very term 326 IAC 2-2-1(uu)(5) is attempting to define. Because this is a deviation from the federal language, we recommend IDEM not deviate from the federal language. If IDEM insists on deviating from the federal language, it should do so carefully and consistently. (NIPSCO)

Response: IDEM agrees that the reference is circular and has changed the language to correct the problem. This is a deviation from the federal language for the definition of "regulated NSR pollutant" because IDEM has chosen to continue to regulate asbestos, beryllium, mercury, and vinyl chloride to prevent backsliding. This portion of the definition is necessary in order to clarify this intent. The reference in 326 IAC 2-2-1(uu)(5) has been changed to "subsection (xx)(1)(A) through subsection (xx)(1)(U)".

Applicability Test

Real emissions increase test as applied to increased utilization

Comment: On the issue of real emissions increase test as applied to increased utilization, IDEM responded that it believes that the new basic applicability test focuses on "real emissions increases" and that many of the proposed modifications will now only be subject to the minor NSR program. IDEM has not addressed, in its comments or in the rules, how it plans to review "increased utilization" issues that involve collateral equipment. In the past, IDEM has assumed that any increases in emissions were caused by the modification. Does IDEM now propose to allow the source to make this determination and not to impose any assumptions? Related to the move to an actual to projected actual emissions applicability test, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (INCMA)

Response: There have been no changes to the rule or policy regarding increased utilization. The current analysis method for units where the increased utilization occurs is actual to future actual. Under the new rules, the past actual to projected actual will apply to the unit being modified as well as the units that are affected by increased utilization. For the most part, increased utilization is analyzed when the modification to an emission unit causes an increase in efficiency. This is generally when an increase in utilization of other emission units occurs.

In addition, U.S. EPA is working on NSR reform to address debottlenecking and expects to publish a proposed rule this year.

Actual to projected actual emissions applicability test

Comment: We strongly support the move to an "actual to projected actual" emissions applicability test. (NSC)

Response: IDEM acknowledges the comment.

Comment: We oppose the proposal to allow the "actual-to-potential" emissions applicability test to be replaced with an "actual-to-projected-actual" applicability test. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The actual to projected actual test focuses on realistic increases in emissions. IDEM does not believe adopting the new applicability test will result in backsliding on air quality. The actual to potential test assumes the unit will operate at its maximum capacity 24 hours a day, 365 days a year, which is rarely the case. This method often results in overestimating the emissions increase for a particular project. If a source chooses to use the actual to projected actual test and determines the modification is exempt from major NSR review, they are still required to comply with the minor NSR and Title V program requirements. For instance, if there are projects that were not otherwise approved in a permitting process, then the source will include a list of the changes in the Title V annual compliance certification. IDEM will have this opportunity to review the projected actual emissions. If actual emissions turn out to be greater than predicted by the source, IDEM will take appropriate steps including the application of the correct permit requirement.

Additionally, sources are required to maintain emissions data of sufficient accuracy for the purpose of determining an emissions unit's post-change emissions. Electric utility steam generating units must report this information to the reviewing agency within 60 days after the end of the year. Non-electric utility steam generating units must report increases in post-change annual emissions when they exceed the baseline actual emissions by a significant amount and it differs from the projections that were calculated before the change. This information is also available for examination by the general public.

The actual to potential test is still available and if the source chooses to use it, they will be exempt from the record keeping and reporting requirements of the actual to projected actual applicability test.

Baseline determination

Comment: We oppose the "look back" provision of the Bush NSR rollbacks which would allow sources to choose their own 24-month baseline period from the previous ten years. Such a provision would allow for increases in emissions because the source could choose the most polluting 24-month period as its baseline. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We strongly support the look-back period of 10 years and agree with the federal review of a reasonable business cycle. (NSC)

Response: The current state rules allow any 24- month period over the previous five years for electric utility steam generating units (EUSGUs) and the most recent 2-year period preceding the project that is representative of normal source operations for non-EUSGU's. U.S. EPA believes ten years is a fair and representative time frame for encompassing a normal business cycle. IDEM has a long history of implementing the current procedures for establishing past actual emissions. Emissions are directly affected by production rates which are in turn affected by market trends or cycles. IDEM has seen very long cycles in sectors such as automobile assembly and foundry operations. These cycles are often based on the specific product made at a specific plant. Unless there is an increase in capacity at a plant, emissions increases are more often the result of increased sales than minor changes within the plant. The proposed rule is intended to more realistically assess whether a change will cause an emissions increase. Sources must have data to support the units operation in order to use the look back period. The past actual emissions are adjusted to reflect decreases that resulted from new regulatory requirements. The assessment of projected future actual then focuses on emission increases caused by the project. IDEM proposes to incorporate the new applicability test into the state program.

Clean Units

Basis for clean unit designations

Comment: IDEM is proposing a provision less stringent than the federal rule by making clean unit designations more difficult to obtain. This discourages units from obtaining clean unit status and thereby could limit the air quality benefits intended in the federal rule. The methodology of the federal rule should be followed, including the federal methodology for BACT determination. (NIPSCO)

Comment: We are concerned with IDEM's proposed changes and we request that IDEM adopt U.S. EPA's approach for determining the level of control for clean units. IDEM's proposal to perform a case-by-case BACT/LAER analysis creates a significant burden for clean unit applicants, as well as the permitting agency, while creating little added environmental benefit. It is unlikely that a case specific BACT or LAER analysis will result in any significant difference than using an average of, or at least as stringent as recent decisions. IDEM's proposed approach creates a time-consuming and labor intensive process while U.S. EPA's approach is more streamlined and still provides assurances for having only well-controlled sources designated as clean units. (DCC)

Response: The Federal rule provides the following mechanisms for obtaining clean unit status:

(1) An emission unit that obtained a major NSR permit in the past ten years may use that BACT or LAER determination as the basis for being designated a clean unit. The designation is good for ten years from the date the control technology becomes operative on the emission unit to be designated as clean unit, or three years from the issuance date of the major NSR permit, whichever is earlier.

(2) An emission unit that receives a major NSR permit in the future may use that BACT or LAER determination as the basis for being designated a clean unit for ten years.

(3) An emission unit equipped with air pollution control technology including pollution prevention (with the qualifying investment in technology) that did not receive a major NSR permit in the past can use the technology review procedures provided by the rule as the basis for being designated a clean unit. The designation is good for a period starting from the date the minor NSR permit designating the clean unit is issued to the end of the 10 year period from the date the control technology was installed.

(4) A future emission unit that is not subject to major NSR can use the state's minor NSR process and the technology review procedures provided by the rule as the basis for being designated as a clean unit. The designation is good for ten years from the date the minor NSR permit is issued, or the date the control technology becomes operational, whichever is later.

IDEM proposes no changes to the process of designation of clean unit for the first two mechanisms for emissions units that followed the normal major NSR review process to establish BACT or LAER requirements.

IDEM is proposing to change the control technology review process for emission units that would receive clean unit designation through the minor NSR process. The federal process for attainment areas requires a review of the RACT/BACT/LAER Clearinghouse for determinations made at the time the emissions unit commenced operation and five years prior to that time. The clean unit designation is then based on the average of those determinations. The federal process for nonattainment areas requires a similar review of the Clearinghouse, with the designation being based on any one of the five best performing similar sources. This is significantly less stringent than how a BACT or LAER determination would have been made at that time. A BACT determination begins with the presumption that BACT is the most stringent emission level found during review. While a less stringent level of control can sometimes be justified, it is clear that an average is always going to be a less stringent limit than the best. LAER is defined as the most stringent level of control achieved by similar sources. Basing a designation on any of five is clearly less stringent than the best. In addition, review of the Clearinghouse is only part of a BACT or LAER determination. IDEM checks the information contained in the clearinghouse against the actual performance of the control technologies used for various emissions unit. IDEM takes into account additional factors such as if an emissions unit is performing significantly better than the emission limit. IDEM has found emissions units that have not achieved the emission limit listed in the Clearinghouse and takes those into account as well. IDEM also uses information collected by the U.S. EPA as they develop National Emissions Standards for Hazardous Air Pollutants. This information is usually more rigorous and complete than information contained in the Clearinghouse. Other sources of information are often supplied by applicants or become known during the public process. Emission units qualifying for designation by virtue of their previous major NSR, BACT or LAER determinations went through this type of review.

IDEM proposes two changes to address the technology review process. First, the technology review process should be the same as provided under the major NSR review rules. These are existing, proven processes that are familiar to the public, applicants, and the agencies. A new unit seeking clean unit designation would be treated the same whether it was receiving a permit under the major or minor NSR programs. The second change is to base all designations made through the minor NSR process on current technology review information. IDEM would not attempt to perform a rigorous control technology review based on information that may or may not have been known in the past. It is difficult, if not impossible, to reconstruct the entire set of information that would have been available in the past. Also, the technology review of an emission unit built eight years ago would require establishing information from as long as thirteen years ago. Control technology requirements can change dramatically over a thirteen-year period. Some of the best technologies are rather mature. Sources that capture all VOC emissions and destroy them in some form of thermal oxidation would be only slightly affected by the difference between the federal process and IDEM's proposal. However, sources of NOx could be treated significantly different under the two processes. The federal technology review process for minor sources provides no benefit to air quality compared to IDEM's proposal.

IDEM has not identified any project that used clean technology in the past in order to take advantage of the clean unit test. On the whole, designations based on current information are going to be cleaner than those based on only old and partial information. An emissions unit would be treated as a clean unit for ten years after the designation.

Comment: We appreciate IDEM's position that units for which a clean unit designation is requested be required to meet BACT or LAER. We also appreciate IDEM's position that this BACT/LAER requirement be met with a "top-down" approach rather than an allowance for averaging BACT/LAER limits. We strongly support these requirements because they will help ensure that these units are adequately controlled. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees that this change from the federal provisions will help ensure that the clean units are adequately controlled and promote greater air quality benefit.

Physical or operational characteristics

Comment: We agree that it is appropriate for IDEM to clarify what might be considered a physical or operational characteristic that formed the basis for a BACT or LAER determination. However, IDEM should clarify in its response to comments or preamble explanation of the rule that there may be cases in which there are no additional physical or operational characteristics beyond the BACT or LAER determination that need to be specified in the permit. If a permit's BACT or LAER determination is detailed, the permit terms should be sufficient to establish clean unit status. When physical or operational characteristics do need to be specified, we agree with IDEM's indication in the preamble that any one of these or some other characteristic proposed by the permittee may be appropriate and that "redundant" characteristics should not be imposed. (CASE)

Response: IDEM agrees that a well-written BACT or LAER determination should be detailed and should specify sufficient permit terms to establish clean unit status. IDEM included the provision in the rule to ensure that there would not be confusion when such provisions are included in permit terms and conditions for clean units. IDEM does not intend to impose redundant characteristics. The intent of the provision is to clarify in the rule that something beyond a pound per hour or pound per ton or parts per million limit will be necessary to establish the clean unit characteristics. IDEM currently takes into account the proposals from the applicant regarding various characteristics that can influence the BACT or LAER permit terms and conditions and will continue to do so.

Comment: We request that IDEM clarify the form that the clean unit designation "terms" in the permit will take. Under the regulatory language, the Title V permit is required to specify the conditions of maintaining the clean unit designation. Specifically, it must include any physical or operational characteristics that formed the basis for the BACT or LAER determination. We are concerned that the proposed options of potential emissions, production capacity or throughput could be viewed as being affected by a project even though a plant does not intend to exceed the characteristics as listed in the permit. We do not believe the source should lose its clean unit designation unless it actually deviates from the operational characteristic listed in the permit. This issue can be addressed by giving a source the option of one of the following two approaches, which we believe are consistent with IDEM's regulations:

(1) If a plant wishes to accept a physical or operational characteristic as an actual, enforceable limitation on its operations, it may do so. Future projects at the clean unit that may affect its capabilities relative to these characteristics would not be considered to have altered the characteristics because the plant would remain subject to the limitations in the permit. If the plant wishes to exceed these limitations, a permit revision would be required.

(2) Alternatively, a plant can accept as conditions for maintaining the clean unit designation the physical or operational characteristics determined by IDEM. The permit would state that, if the plant decides to implement a change that would alter one of these characteristics, the clean unit designation would no longer apply and the source would become subject to the basic actual-to-projected-actual test that applies to all existing units. No permit revision would be required because the permit would already state the consequences of altering the designated physical or operational characteristics.

(CASE)

Response: This is an implementation issue. IDEM will work with the owners and operators of an emissions unit and the public when determining the appropriate terms and conditions for a particular clean unit designation in a permit. A one-size-fits-all approach will not work in this case because of the many different types of emissions units that could obtain clean unit status and the types of BACT or LAER determinations.

The Part 70 requirements will require a permit modification whenever clean unit status is lost such that the permit terms and conditions accurately reflect the applicable requirements for the unit. The type of permit modification required will most likely partially depend on the action that causes or will cause the unit to lose its status.

Timing for Controls Comparable to BACT or LAER

Comment: IDEM proposes that a facility may not obtain the clean unit designation for projects that were undertaken prior to issuance/approval of its rules unless a major NSR permit was obtained. While we believe that IDEM should adopt the federal approach, we understand IDEM's concern about the resources that might be needed to recreate BACT or LAER determinations. Because IDEM and sources are now on notice of this requirement in the rule, these resource issues should not present a problem for any controls installed after March 3, 2003, the effective date of the federal rule. Therefore, IDEM should state that any controls installed after March 3, 2003 should qualify for the clean unit designation. We are concerned that, although IDEM is moving expeditiously to adopt the new rules, there may be a substantial time period before U.S. EPA approval of the new rules simply due to the time required to complete the appropriate procedures. In the meantime, sources and IDEM are well aware of what is required to establish a clean unit designation and there should be no hardship in meeting these requirements for minor NSR permits issued after March 3, 2003. (CASE)

Response: Minor sources that construct between March 3, 2003 and the anticipated October 2004 effective date of Indiana's NSR rules are not only on notice of the federal rule, but have been on notice of IDEM's proposal since September 1, 2003. If IDEM's proposal is adopted into Indiana's NSR rules, then a source would only be affected if it chose to install equipment that qualified under the federal five year averaging, or selection, process rather than technology that was more clearly BACT or LAER. Control technology requirements are not likely to be significantly different between March 3, 2003 and October 2004.

Information required for clean unit designation request

Comment: The language in 326 IAC 2-2-10 does not contain any substantive information about what information is required of the applicant who requests a clean unit designation per the provisions of 326 IAC 2-2.2-2. The specifics mentioned under paragraph (1) of this section appear to only apply to new sources or major modification. We presume that IDEM will issue guidance that will more closely identify the information needed by IDEM in order to issue a clean unit designation per the provisions of 326 IAC 2-2.2-2. However, we recommend that IDEM consider language in this section identifying the information necessary for IDEM to make the clean unit designation. (TRI)

Comment: The existing language in 326 IAC 2-2.2-2(c)(2) does not clearly indicate that the requirement to demonstrate that the allowable emissions from the unit for which clean unit status is being requested is the responsibility of the owner or operator applying for this status. Unlike 326 IAC 2-2.2-2(c)(1)(A), there is no phrase indicating that the owner or operator must make this demonstration. If it is the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, a phrase should be added that would direct the interested parties to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7. If it is not the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, then the proposed changes made by IDEM to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 should be reconsidered or eliminated. (TRI)

Response: IDEM has added language in 326 IAC 2-2-10 to clarify that the applicant shall submit the information for the clean unit designation process, including the air quality analysis. IDEM requires the owner or operator to make the air quality demonstrations for major new source review permitting and intends to require that the owner or operator make the demonstration for the allowable emissions from the unit for which clean unit status is being requested. The requirement to conduct the air quality analysis would apply whether or not IDEM cites the sections of 326 IAC 2-2 that address air quality impact analyses within the clean unit rules. IDEM previously added provisions in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 to clarify this intent. The U.S. EPA has not revised the federal PSD rule to include more specific application requirements for major new source review or for review of clean unit designations; therefore, IDEM will not include rule language to include more specific requirements. The evaluation criteria for clean unit designations to be used by IDEM are provided in 326 IAC 2-2.2 and 326 IAC 2-3.2. The information provided by the owner or operator should be sufficient to evaluate the control technology in accordance with the criteria specified in the rule.

Exemption from air quality analysis for sources that have not gone through a NSR permitting review

Comment: We suggest that owners or operators of stationary sources that request a clean unit designation, but have not gone through a major NSR permitting review be allowed, at a minimum, the same exemptions as allowed for new or modified sources. Suggested changes to 326 IAC 2-2-4(b)(2) are:

(b) Exemptions are as follows:

(1)....

(2) A source or modification **or clean unit designation per 326 IAC 2-2.2-2** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emission increase of the pollutant from a new source or the net emissions increase of the pollutant from the modification, **or the allowable emission rate on which the clean unit designation is based** would cause, in any area, air quality impacts less than....

(B) the concentration of the pollutant in the area that the source or modification **or clean unit designation** would affect are less than the concentrations listed in clause (A), or the pollutant is not listed in clause (A).

(TRI)

Response: IDEM agrees that an owner or operator that requests a clean unit designation without going through major new source review permitting should be allowed an exemption from the air quality analysis requirement if the allowable emissions are below the significance level. IDEM has made the suggested changes in 326 IAC 2-2-4(b)(2).

Requirements for sources that have not gone through a NSR permitting review

Comment: The existing language in 326 IAC 2-2-5(a) does not address, in all situations, what is required of an owner or operator of a stationary source that is requesting a clean unit designation but has not gone through a major NSR permitting review. The existing paragraph only addresses situations that involve allowable emissions increases. It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the need for an allowable emissions increase.

We suggest that the language be clarified so that owners or operators of stationary sources that request a clean unit designation but have not gone through a major NSR permitting review and are not requesting allowable emissions increases have definitive language on the required demonstration. Suggested changes to this section are:

(a) The owner or operator of the proposed major stationary source or major modification, or the owner or operator that requests a clean unit designation **per 326 IAC 2-2.2-2**, shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of....

(1)....

(2) any applicable maximum allowable increase over the baseline concentration in any area, **as described in section 6 of this rule. In the case of a clean unit designation, the owner or operator must demonstrate that the allowable emission rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of the items noted in (1) and (2) above.**

(TRI)

Response: Major new source review has always involved modeling the allowable emissions from a unit that was changed. The clean unit designation is not different in that the owner or operator is requesting a designation for the unit so that the owner or operator can modify the unit within specific constraints and avoid major new source review for those modifications. IDEM has clarified this intent by modifying the language in 326 IAC 2-2-5.

Units that have not gone through a NSR review and do not trigger an emissions increase

Comment: The existing language in 326 IAC 2-2-6(a) is confusing in that it appears to address "increased emissions." It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the any emissions increase.

We believe the language we proposed in our comment for 326 IAC 2-2-5(a)(2) would provide sufficient direction to the owner and operator who requests a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger an emissions increase.

We suggest the language IDEM has added in section 6 related to clean units be eliminated as follows:

(a) Any demonstration pursuant to section 5 of this rule ~~or 326 IAC 2-2.2-2(c)(2)~~ shall demonstrate that increased emissions caused by the proposed major stationary source, **or** major modification~~, or clean unit~~ will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1)....

(TRI)

Response: IDEM agrees that the additional clarification was not necessary because Section 5 of the rule adequately addresses applicability of this section. IDEM has removed the added language in 326 IAC 2-2-6(a).

Air quality analysis requirements

Comment: Similar to requirements for requesting a clean unit designation for emission units that have not previously received a major NSR permit that IDEM has proposed to add under 326 IAC 2-2, IDEM has added similar rule language in 326 IAC 2-3. This language states that the department must determine that the allowable emissions for the emissions unit requesting a clean unit designation in a nonattainment area will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment. However, unlike in 326 IAC 2-2, there are no corresponding sections in 326 IAC 2-3 that direct the applicant about what type of air quality analysis should be performed. We suggest that IDEM clarify for those owners or operators who request a clean unit designation per 326 IAC 2-3.2-2 what the air quality analysis will entail. (TRI)

Comment: We believe that there is value in making the clean unit designation available to those emissions units that have not previously received a major NSR permit, even in nonattainment areas. We support IDEM's development of rules to this affect. However, the current proposed revisions under 326 IAC 2-3 do not adequately develop for the interested owners or operators the procedures to follow related to the air quality analysis requirements. (TRI)

Response: IDEM based the proposed provisions on the federal rules in 40 CFR Part 51.165. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. IDEM will not make any changes at this time since the federal rules are not specific.

Minor modifications at major sources can obtain clean unit designation through the provisions in 326 IAC 2-3.2. If the physical change or change in the method of operation has a potential to emit greater than the significant levels defined under 326 IAC 2-3-1(qq), the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A). If the impacts are less than the significant impact level, then no degradation of air quality degradation is presumed to occur.

PSD increments

Comment: It does not appear to make sense that a demonstration of no violation of applicable PSD increments be made in a nonattainment area. By its classification as a nonattainment area for a pollutant, no increments are set and increment consumption is not relevant since the area in question does not meet the national ambient air quality standard for the nonattainment pollutant. (TRI)

Response: The federal provisions in 40 CFR 51.165(d)(3)(ii) include this reference to a demonstration of no violation of applicable prevention of significant deterioration increments in a nonattainment area. Therefore, IDEM must include this reference in the rule. IDEM agrees that in practical application the increment consumption requirements are not relevant in a nonattainment area since the area already does not meet the national ambient air quality standard for the nonattainment pollutant. To demonstrate that a unit that has allowable emissions greater than the significant level will not contribute to the violation, the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A).

Disallowing a clean unit designation

Comment: The proposed provision, 326 IAC 2-2.2-1(d)(2)(A), disallowing the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type is contrary to the concept of BACT. The term "uncontrolled" implies post-combustion controls and as such ignores any emissions reduction benefits and additional expense incurred by an applicant to purchase and install an emissions unit that incorporates the latest in emissions reduction technology inherent in the design of that newest upgraded model of the particular piece of equipment. For example, a choice of a combustion turbine employing the latest in low-NOx emission reduction combustion technology in its design, without the addition of a post-combustion NOx control device, should not be disqualified if BACT for that unit has no additional control and it emits less NOx than the less expensive version of the same control technology. This provision should be modified to allow for clean unit designation for such a situation. (NIPSCO)

Response: The language in the proposed 326 IAC 2-2.2-1(c)(2)(A) [this provision was 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice] is directly from the federal provisions at 40 CFR 51.166(t)(3)(ii)(*a*) and 40 CFR 52.21(x)(3)(ii)(*a*). The situation that the commentor describes, however, is not disallowed by this provision because it can be considered to be pollution prevention technology that can be considered for BACT for the reasons that the commentor stated. No change to the provision is necessary.

Investment for control technology

Comment: The provision, 326 IAC 2-2.2-1(d)(2)(A), should be modified to indicate that the "...investment to install the control technology..." includes the situation where an applicant incurs additional expense to purchase the lower emitting technology inherent in the design of an emission unit such as a control technology that includes low-NOx combustion technology as an inherent design feature. (NIPSCO)

Response: The language does not need to be changed because the phrase, "the level of a standard, uncontrolled, new emissions unit of the same type" encompasses a situation where an applicant incurs an additional expense to purchase a non-standard new emissions unit that inherently results in lower emissions. This provision was originally listed as 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(2)(A) due to formatting changes.

BACT and LAER clarification

Comment: In 326 IAC 2-2.2-1(d)(3), current-day BACT or LAER should be clarified to specify it is the BACT or LAER as of the date of the submittal of the clean unit designation application to IDEM. In 326 IAC 2-2.2-1(e)(1), 326 IAC 2-2.2-2(c)(4), and 326 IAC 2-2.2-2(d)(3), current-day BACT should be clarified to specify it is the BACT as of the date of the submittal of the clean unit designation application to IDEM. (NIPSCO)

Response: The proposed language referring to "current-day BACT or LAER" is from the federal provisions at 40 CFR 51.166(t) and (u) and 40 CFR 52.21(x) and (y). "Current-day BACT or LAER" is not "BACT or LAER" as of the date of submittal of the clean unit designation application. It is BACT or LAER as of the day of issuance of the determination. In accordance with the November 17, 1998, U.S. EPA memo titled "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements", IDEM can consider information provided after the submittal of an application to determine BACT or LAER; therefore, the commentor's characterization is inaccurate. This provision was originally listed as 326 IAC 2-2.2-1(d)(3) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(3) due to formatting changes.

Comment: In 326 IAC 2-2.2-1(g)(4), for clarity, it would be helpful if this provision specifically indicated the BACT or LAER is the BACT or LAER utilized for the clean unit designation. The following may be helpful:

"(4) All emissions limitations and work practice requirements

adopted in conjunction with the BACT or LAER **for the clean unit,** and any physical...."
(NIPSCO)

Response: This meaning is clarified by taking the provision in the context of the provisions within the subsection. The language in 326 IAC 2-2.2-1(f) [this provision was originally listed as 326 IAC 2-2.2-1(g) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(f) due to formatting changes] states that the permit must include the terms and conditions listed within that subsection related to the clean unit. Each subdivision within the subsection refers to terms and conditions related to the clean unit designation. No rule change is necessary for clarification.

Presumptive determination

Comment: The provision, 326 IAC 2-2.2-2(d)(1), purportedly addresses whether a unit's emissions control technology is equivalent to BACT determined at the time of the submission of the clean unit designation application to IDEM. IDEM also proposes to compare the applicant's presumption of being comparable to BACT, as listed in 326 IAC 2-2-1(i), with additional BACT or LAER determinations of which it is aware. We question whether the comparison to LAER is appropriate and believe it should not be included in any comparison for consideration of a presumptive determination of whether a unit's emission control technology is equivalent to BACT. (NIPSCO)

Response: IDEM agrees that the reference to LAER is not necessary since the clean unit designation provisions in this section have been changed from the federal provisions to ensure that the emissions control technology is equivalent to BACT instead of the average of BACT and LAER determinations for the preceding five years. IDEM has removed the phrase "or LAER" from 326 IAC 2-2.2-2(c)(1). This provision was originally listed as 326 IAC 2-2.2-1(d)(1) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(1) due to formatting changes. It should be noted that the BACT determinations do include a consideration of LAER determinations.

Additional information for determination

Comment: We believe it is unfair for the IDEM to be making comparisons to "additional... determinations of which the department is aware". The applicants and IDEM should be utilizing the same database containing the same information for this process and, therefore, IDEM should make this database available at no charge to the applicant prior to the applicant's submittal of the application.

If IDEM retains the language of the "any additional... determinations of which the department is aware", it should explicitly state in the rule language the information from this and any additional information obtained during the public participation period must be limited to information of determinations no more current than the date of the applicant's submittal of their clean unit designation application to the department. (NIPSCO)

Response: The federal rule provisions at 40 CFR 51.166(u)(4)(i) and 40 CFR 52.21(y)(4)(i) include the language regarding consideration of additional determinations of which IDEM is aware; therefore, the language is appropriate and required by the federal provisions. IDEM would make available to the applicant and the public any additional information it considered in the clean unit determinations.

Renewals

Comment: On the renewal of a clean unit, the burden to require modeling for NAAQS for a renewal is an excessive expense to be required automatically. If at the end of a clean unit designation period, BACT or LAER has not changed for control of the pollutant or the clean unit is performing comparable to BACT or LAER, then the owner should be allowed to request a renewal with documentation of the BACT or LAER status, and provide test data to prove the unit is still complying within past limits set when the unit was first determined to be a clean unit. This renewal should be public noticed for 30 days. Modeling should only be required if BACT or LAER has changed significantly or there have been major changes to the NAAQS in the area. (NSC)

Response: The federal provisions at 40 CFR 51.166(t)(3) and (u)(3) and 40 CFR 52.21(x)(3) and (y)(3) require the same demonstrations for re-qualification as those required for qualification, including the air quality demonstration, except that the applicant will not be required to meet an additional investment test. In addition, section V.C.9. on page 80227 of the December 31, 2002 *Federal Register* notice (67 FR 80227) finalizing the federal major new source review revisions indicates that the emissions unit must go through an air quality review for re-qualification. The renewal will go through public comment for 30 days. Even if there are not changes in the national ambient air quality standards (NAAQS) in the area, more increment could have been consumed by new or existing sources since the time of the original designation. Since the renewed designation will allow the unit to make modifications for an additional ten years within certain constraints so that major new source review, including a modeling analysis, will not be necessary, the modeling analysis at renewal must be required in accordance with the same guidelines as the original designation.

Pollution Control Projects

Support for pollution control project exemption

Comment: We support the revisions IDEM has proposed to the pollution control project exemption in this proposed rule. (AEP)

Response: IDEM agrees that simplifying the process for pollution control projects is a positive change.

Environmental analysis

Comment: We urge that a full environmental analysis be performed for all PCP applications to determine not only the air quality impacts that would result from the project, but also impacts to water and solid waste streams. This multi-media analysis is critical for PCPs and other environmental permitting programs and should be adopted by all of the environmental regulatory boards. The NSR rules should require verification and approval by IDEM that a PCP will realize true environmental benefits. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The provisions at 326 IAC 2-2.3-1(g) and 326 IAC 2-3.3-1(g) ensure that a pollution control project will realize true environmental benefits and provide the documentation for IDEM to review during an inspection to verify that a pollution control project is operated and maintained consistent with the environmental benefit analysis. In addition, IDEM has the authority to review the notifications and applications submitted in accordance with 326 IAC 2-2.3-1(b) and 326 IAC 2-3.3-1(b). While pre-approval is only necessary for unlisted projects, IDEM has the authority to ensure that listed pollution control projects meet the environmental benefit and air quality criteria as well.

The U.S. EPA clarified that non-air pollution impacts will not be considered in the "environmentally beneficial" determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM cannot include a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion.

If IDEM or a member of the public has a concern about the impacts of a project on other media, IDEM can discuss the project with other offices within IDEM to determine if authorities held by another office may be used to alleviate the concern. In the past, IDEM has discussed projects with other offices within IDEM when such multi-media concerns have arisen.

Minimizing collateral emissions

Comment: We support IDEM's decision to adopt the pollution control project (PCP) exclusion directly from the federal rules and to conform the existing state regulations to reflect the listed projects and other elements of the new exclusion. We are concerned, however, with the change that IDEM proposes regarding minimizing collateral emission increases in nonattainment areas. We believe that this provision is inappropriate and should be revised. The test in the federal rule is whether the project is environmentally beneficial. If a project meets that test, it should be approved. We recognize that U.S. EPA states in the preamble to the NSR Improvement rule that "because increases in a nonattainment pollutant contribute to the existing nonattainment problem, you or the reviewing authority must offset with acceptable emissions reductions any significant emissions increase in a nonattainment pollutant resulting from a PCP." (67 Fed. Reg. 80237.) We do not interpret this statement to require that the collateral increase must be offset to zero as is implied by the draft regulatory language. Indeed, U.S. EPA refers to "acceptable emissions reductions." A source would not even be required to use the PCP exclusion if it were not projecting a greater than significant increase in emissions of a collateral pollutant. Any source projecting a less than significant increase would simply be required to track its emissions under the reasonable possibility test. Thus, any offsetting required should only need to reduce the projected actual increase level down to the significant level. (CASE) (ALCOA)

Response: IDEM disagrees with this interpretation. The concept of offsets for major new source review has always been to completely offset emissions increases to at least zero. IDEM has interpreted the term "acceptable" to mean that IDEM does not have to require the higher offset to emissions increase ratios that are required for projects that must go through major new source review in a nonattainment area. IDEM has provided a one-to-one ratio instead of the 1 to 1.3 ratio as an encouragement to pollution control projects in nonattainment areas that otherwise would have been required to go through major new source review and obtain greater offsets. IDEM agrees that the final test is to prove that the project is environmentally beneficial, and for nonattainment areas, part of the proof is provided by offsetting the significant increase. If the project does not result in a greater than significant increase in a collateral pollutant, the project will not be required to apply for the exclusion or obtain offsets.

Comment: IDEM should clarify in the rule that this offset requirement would not apply where the collateral increase is of a substance that is a precursor for the same NAAQS pollutant. In other words, if a PCP would reduce VOC but slightly increase NOx in an ozone nonattainment area, the source should not be required to offset the NOx emissions since NOx and VOC are both precursors to the same NAAQS pollutant, ozone (unless the area was also not in attainment for NOx). (CASE) (ALCOA)

Response: While nitrogen oxides are precursors for ozone, there are currently no requirements in Indiana for sources to consider nitrogen oxide emissions increases under the nonattainment new source review rule provisions in ozone nonattainment areas. However, IDEM notes that the offset requirements may change under the 8-hour ozone and $PM_{2.5}$ implementation rules when U.S. EPA finalizes them. The existing offset procedures consistent with 326 IAC 2-3 will be followed. Therefore, a clarification is not necessary in the rules.

Public notice for pollution control projects

Comment: The length of time to procure and install equipment varies widely and is immaterial to the issue of public notice. We maintain that adoption of U.S. EPA's approach in not requiring a public comment period for changes related to a pollution control project should be adopted. (INCMA)

Response: The federal rules at 40 CFR 51.166(v)(5) and 40 CFR 52.21(z)(5) require a public comment period for the approval of a pollution control project exclusion for unlisted projects; therefore, IDEM has adopted the federal approach. The Part 70 rules and Indiana's associated rules implementing the Part 70 program at 326 IAC 2-7 require that all applicable requirements be included in a Part 70 permit. The addition of a listed pollution control project that uses the proposed pollution control project exclusion provisions triggers a new applicable requirement from 326 IAC 2-2.3-1(g) or 326 IAC 2-3.3-1(g). Since a new applicable requirement is triggered, the Part 70 permit must be amended. In accordance with 326 IAC 2-7-11, an administrative amendment cannot be used to add a new applicable requirement; therefore, the minor permit modification procedures will be used. While the minor permit modification procedures in 326 IAC 2-7-12 require a public comment period, the applicant is allowed to proceed with the project without waiting for the minor permit modification to be issued. Therefore, the minor permit modification procedures will not affect the length of time to procure, install, and operate pollution control project equipment.

Listed projects

Comment: We reject IDEM's statement that it is not necessary for IDEM to draft a procedure for adding projects to the list because they lack authority to do so. We believe it is within IDEM's authority and responsibility to identify environmentally beneficial projects even with federal endorsement. (INCMA)

Comment: We believe there is an opportunity to further pollution prevention efforts in Indiana in the qualification of pollution control projects as "listed" versus "unlisted". Neither IDEM's draft NSR rule or U.S. EPA's rule provide a mechanism for proven and tested environmentally beneficial pollution control projects that are unlisted to become listed, thereby becoming eligible for the advantages afforded to listed projects. In order to provide an avenue for unlisted environmentally beneficial pollution prevention projects to become listed, thereby making available the less burdensome minor permit modification provisions, an avenue for unlisted, proven pollution control projects to become listed should be developed. (PPP)

Response: IDEM disagrees that it is within its authority to add projects to the presumptive list. The U.S. EPA stated in Section VI.B.2.d. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions that the U.S. EPA will update and maintain the presumptive list through notice and comment rulemaking. If and when sufficient data become available to justify that an unlisted pollution control project should be evaluated to be a listed pollution control project, IDEM can discuss the project with U.S. EPA to recommend adding the project to the list. If U.S. EPA makes changes to the presumptive list, then IDEM will pursue the same changes in the state rules.

Treating a PCP as a significant source modification

Comment: The fee of $3,500 required for a permit to "allow" a source to install or initiate a pollution control project is the same fee required for the installation of a significant emissions unit. If IDEM wants to encourage pollution control projects, it should not impose fees on a source to do so. (INCMA)

Comment: It is expensive for sources to pay a consultant to prepare an application for a significant source modification, pay a $3,500 fee and pay for the equipment or the project to be implemented. Treating a pollution control project the same as an emissions unit project will only serve to discourage sources from installing pollution control equipment or implementing projects that reduce emissions. (INCMA)

Response: Most pollution control projects do not cause a significant increase in emissions, and, therefore, do not require the pollution

control project exclusion from major new source review permitting and do not have an associated fee. For those projects that result in a significant increase in emissions, the significant source modification is required for unlisted projects because of the level of the emissions increase and the requirements in the federal rules for the permitting agency to issue an approval subject to public notice and U.S. EPA review for those projects that are not listed. While IDEM encourages pollution control projects, IDEM is also obligated to ensure that the air quality standards will not be violated whenever a major stationary source causes a significant emissions increase. The rules require IDEM to review and approve unlisted projects; therefore, a fee to complete the review is justified. There are no fees associated with the significant permit modification used to add the applicable requirements for the pollution control project exclusion to the Part 70 permit. There are no fees associated with the minor permit modification to add the applicable requirements for a listed pollution control project to the Part 70 permit.

Air quality analysis

Comment: We appreciate IDEM's decision to adopt the federal pollution control project exclusion provisions, however, we still believe it is necessary to define what the requirements are for conducting an air quality analysis for a pollution control project, as the requirements are not defined in the rule. (INCMA)

Response: IDEM based the proposed provisions on the federal rules. IDEM agrees that a clarification can be provided for attainment areas, and has therefore clarified, in 326 IAC 2-2.3-1(d)(5), that the required air quality impact analysis shall be performed in accordance with the provisions of 326 IAC 2-2-4 and 326 IAC 2-2-5. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. For implementation purposes, in lieu of an air quality analysis, the applicant of a pollution control project would be required to offset significant collateral emissions increases of a nonattainment pollutant. IDEM will not recommend any changes to the nonattainment pollution control project provisions at this time since the federal rules are not specific.

Pollution prevention opportunities

Comment: We believe there may be opportunities to further pollution prevention efforts in the assessment of pollution prevention projects for determination of environmental benefits. Currently, this review limits the review to air emissions. An NSR review of pollution prevention projects should take into account reductions in air emissions, pollutant levels in and the quantity of wastewater generated and discharged as well as volumes and toxicity of solid waste streams. A project with minimal benefits in air quality could have significant environmental benefits in the areas of water and land, still making it a beneficial pollution prevention project that should be eligible for the benefits afforded by the revised NSR rules. Should this not be allowed by the federal NSR rule, we would like to see IDEM discuss this issue with U.S. EPA in an effort to make further progress on this issue. (PPP)

Response: The U.S. EPA clarified that non-air pollution impacts will not be considered in the "environmentally beneficial" determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM has not included a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion in the draft rule for preliminary adoption. However, IDEM will continue to work with the public and U.S. EPA regarding projects with multi-media benefits. The pollution control project exclusion is not necessary if the project does not result in a significant increase in emissions of a collateral pollutant.

Collateral pollutants

Comment: In 326 IAC 2-2.3-1(d)(4), the requirement to minimize collateral pollutants is overly broad in that it could be misunderstood to attempt to regulate pollutants in other media that are outside the authority of the Air Pollution Control Board and even other air emissions for which IDEM does not specifically have regulatory authority. We recommend this language be clarified to limit the minimization of emissions of collateral pollutants to regulated NSR air pollutants. The language should be clarified as follows:

"...and in a way as to minimize,... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Comment: In 326 IAC 2-3.3-1(d)(4) and 326 IAC 2-2.3-1(g)(1), for consistency, the language should be modified as follows:

"...and in a way as to minimize,... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Response: The federal rules at 40 CFR 51.165(e)(3)(iv), 40 CFR 51.166(v)(3)(iv), and 40 CFR 52.21(z)(3)(iv) do not use the phrase "regulated NSR air" in between "collateral" and "pollutants". Since this is a certification statement, IDEM will not change the rule language from the federal version. A discussion at Section VI.A. on page 80232 (67 FR 80232) of the preamble in the December 31, 2002 *Federal Register* finalizing the major NSR rule revisions clarifies that U.S. EPA is concerned with air pollutants versus other media. In addition, pollutants other than regulated NSR air pollutants do not trigger major new source review and the need for an exclusion from major new source review.

Plantwide Applicability Limits

Prohibit emission increases

Comment: We believe if IDEM proceeds with a PAL, the rule should prohibit emission increases and that the rules should require revocation of the PAL if the source is found to be in violation of the PAL. The rules should also require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. We appreciate and support IDEM's position that PAL determinations will be subject to public review. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees that PAL determinations should be subject to public review, but believes that PALs can be environmentally beneficial even without requiring a declining cap. A PAL is generally more restrictive than the current requirements because emissions are capped regardless of future increases in production and because under the current rule, a source can be modified numerous times with each modification increasing emissions by just less than a significant amount. The PAL provisions will limit the increase in actual emissions to the baseline actual emissions plus a one time addition of the significant level for a ten year period. The language in 326 IAC 2-2.4-11 and 326 IAC 2-3.4-11 defines the provisions the source must follow in order to increase a PAL emission limitation. IDEM believes the PAL rules provide sufficient review and compliance measures to assure there is not an increase in emissions that does not go through the appropriate modification procedures.

Allocation of emissions upon termination

Comment: While we agree that IDEM should retain discretion to make a fair and equitable allocation of the emissions under a PAL upon termination, we view the "sham PAL" scenario described at the September 10, 2003, public meeting as highly unlikely, given the investment that is required to develop a PAL. We also believe that sources will legitimately rely on their ability to make changes under the

PAL and that they should not be penalized if a valid reason for early termination arises. We agree with IDEM that any source proposing to terminate a PAL should propose how the emissions should be allocated. IDEM's rules should provide that, as long as the source's proposal is reasonable and does not represent circumvention of the rules, it should be adopted in the new permit terminating the PAL. (CASE) (ALCOA)

Comment: We are concerned with IDEM's proposed treatment of a PAL upon termination. We think that when a PAL expires, the PAL limit should continue to be an enforceable plantwide limit, but that it would no longer serve the purpose of being the threshold for NSR. In this way, the plantwide limit would continue to serve its purpose of limiting emissions without creating new significant constraints that would arise with the desegregation of that limit. While the PAL cap would remain in effect, just as plantwide synthetic minor limits do at non-PAL facilities, changes after the PAL expires would need to be considered under the conventional NSR applicability criteria. In effect, the PAL would become a simple facility-wide limit. Under IDEM's draft NSR rules, companies with a terminated PAL are to continue to operate under the PAL limit until a revised permit is issued. We recommend that sources with terminated PALs be required to continue to demonstrate compliance with the facility-wide limit.

If IDEM believes that such an approach is not feasible for certain PAL sources, we recommend changes to its draft approach. Specifically, IDEM should not reallocate PAL emissions based on emission limits that were eliminated by a PAL. As U.S. EPA pointed out in the final NSR reform rules, the plant may have made changes under the PAL that would make it difficult or impossible to assign the old limits to the current equipment or meet the old limits. We recommend that the reallocation of a PAL begin with a proposal from the PAL owner. As long as the proposal from the PAL owner is practically enforceable and demonstrates that the overall PAL emissions limit is met, then IDEM should approve that proposal.

We are concerned that the lack of certainty regarding the treatment of PALs when they are terminated or revoked would make this valuable NSR reform measure too risky for most companies to use. A company considering a PAL needs to know with some certainty that, when a PAL is terminated, its facility will not be put into a position of noncompliance due to an unachievable reallocation of the PAL. (DCC)

Response: The draft rule does not penalize a source for terminating its PAL. In fact, it is considerably more flexible than the federal rule by allowing a source to terminate prior to the ten year expiration. IDEM added this flexibility to assure that sources would have a way out of the PAL, unlike the federal rules which lock the source into a ten year limitation. The termination procedures that IDEM created closely follow the expiration procedures as stated in the rules. IDEM does not believe this added flexibility has created a lack in certainty. As with the federal expiration procedures, the emissions will be reallocated per the source's proposal which will be reviewed by IDEM and the public. If a source provides a reasonable proposal for allocating the emissions, IDEM will approve the termination of the PAL.

Discretion retained

Comment: Under 326 IAC 2-2.4-1(b), it states that the department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of the rule. IDEM has not used "shall" in the language. Is IDEM retaining discretion to deny a PAL even if a source meets the requirements? If so, under what circumstances could a PAL be denied even if the source complied with the requirements? (INCMA)

Response: A PAL may not be the right program for everyone. IDEM reserves the authority to deny the PAL if the compliance history of the source is such that it does not seem likely that they will be able to comply with the PAL requirements or if there are other considerations indicating that a PAL is not workable or suitable for the source.

Potential to emit

Comment: In the definition of PTE under 326 IAC 2-2.4-2(k), "secondary emissions do not count in determining the potential to emit of a source". Secondary emissions are not defined. What does IDEM mean by "secondary emissions?" (INCMA)

Response: "Secondary emissions" are defined in 326 IAC 2-2-1(ww) and generally refer to emissions that would occur as a result of the construction activity, but do not come from the constructed facility itself (for example, increases in vehicle emissions). The definitions section at 326 IAC 2-2.4-2 (a) indicates that a term that is not defined in 326 IAC 2-2.4-2 shall have the meaning provided in 326 IAC 2-2-1.

Startup, shutdown, and malfunction emissions

Comment: This requires that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions. It does not include the language "if quantifiable". What protocol has IDEM provided to U.S. EPA for sources to enable them to make this compliance determination? (INCMA)

Response: U.S. EPA has indicated that use of the phrase "to the extent quantifiable" would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase "to the extent quantifiable" from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On January 7, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to 326 IAC 2. Comments were made by the following parties:

Hoosier Environmental Council (HEC)
Indiana Chamber of Commerce (ICC)
Citizen's Thermal Energy (CTE)
Eli Lilly and Company (ELC)
ALCOA (ALC)

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

Comment: The rulemaking should not proceed while the litigation is being conducted at the federal level. If there are changes to the federal rule, then the state rule will need to change also. IDEM has said that U.S. EPA requires that these changes be submitted as a SIP revision by 2006. Given that the federal court has agreed to an expedited litigation schedule, we believe that there's plenty of time to wait for litigation to be finished before rulemaking continues. (HEC)

Response: It will be several more months before this rule is ready for final adoption. Any developments in the litigation during that time will be taken into account. The Court indicated the federal court case would be on an expedited schedule, but it is not clear what that means. IDEM believes it is important to keep the process moving during the litigation. IDEM also notes that it is significant that the Court Of Appeals for the District of Columbia Circuit Court did not stay this rule though they did for the Equipment Replacement Provisions rule.

Comment: Backsliding is prohibited by the CAA, yet, in the July 23, 1996 *Federal Register*, U.S. EPA estimated that these changes would actually reduce the number of sources subject to NSR by over 25% and that 25% of the modifications would also be excluded in the NSR review under these rules. (HEC)

Response: The fact that fewer projects will be subject to NSR does not in and of itself mean that there will be backsliding in terms of environmental protection. The types of projects that will not need to go through NSR are ones where little or no emissions increase is expected. Furthermore, projects will still be subject to Indiana's minor NSR program. Under the new rule, modifications under the major NSR program will rely on actual emissions increases, but the state's minor NSR program will continue to be based on the potential to emit. Also, Part 70 requires that all applicable requirements be included in the Title V permit. All of the major NSR sources will operate under Part 70, and therefore, will be required to apply for a Title V permit modification, in some cases when neither minor NSR or major NSR apply.

Comment: We are pleased that IDEM is recommending changes to the retroactive designation of clean units to ensure that emissions are not increased consistent with the Clean Air Act. IDEM agrees to ensure that units for which a clean unit designation is requested be required to be BACT or LAER, and that these standards be set using the top down approach rather than an averaging approach, and we strongly support these revisions. (HEC)

Response: We agree that our approach on clean units is environmentally protective.

Comment: We continue to have concerns about and are opposed to the projected actual emissions applicability test and we continue to believe that the actual to potential test is more protective of air quality. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. In fact, in its 1996 analysis, U.S. EPA estimated that 25% of the modifications which would otherwise be subject to major NSR, would be excluded due to this provision.

IDEM stated that any problems with this revision would be caught and dealt with in the annual Title V compliance certification. This, however, would still allow potentially harmful increases in emissions in that period before the annual compliance certification. (HEC)

Response: The actual to potential test is unrealistic because most companies do not operate every hour of every day of the year. It is an artificial comparison when the past actuals are compared to a potential that does not reflect how the business is actually operated. For continuous operations, the past actuals would also be comparable. IDEM has reviewed applications that were submitted in the past to see if there are sources or projects that would have been reviewed differently and therefore, would have been determined to require some level of control as a result of that review. IDEM feels that this rule change will not allow projects that would have been controlled in the past to escape review of control under the revised rules.

Comment: We continue to believe that the rule should require that pollution control projects (PCP) realize overall environmental benefits by requiring a review of impacts on water and solid waste streams. IDEM stated that U.S. EPA will not consider non-air pollution impacts in the environmental review of these projects as pollution control projects, and yet clearly IDEM has the authority to be more stringent than the U.S. EPA requirements and we would encourage IDEM and the board to take another look at this issue. (HEC)

Response: In the preamble to the final rule in the December 31, 2002 *Federal Register*, U.S. EPA states that it is difficult to compare the cross-media tradeoffs, and therefore, difficult to weigh their importance in appraising the overall environmental benefit of a PCP. Because U.S. EPA did not receive any comments on how to compare cross-media pollution, it determined that it is inappropriate to consider non-air impacts when considering whether projects, activities, or work practices qualify for the PCP exclusion. (67 FR 80236)

Comment: We support preliminary adoption of the rule. (ICC) (CTE)

Comment: We support adoption of the rule. We believe the rules will promote greater environmental protection, improve production efficiency, help sources to use less energy, increase safety, and simplify the administrative aspects of the program. The rule changes will help existing sources as they are dealing with the recent economic downturn. There are better ways to improve air quality, such as through the SIP process, rather than through NSR. (ELC)

Response: We agree that preliminary adoption of this rule is appropriate.

Comment: The definition of "regulated NSR pollutant" should exclude from the definition of "fluorides" a specific hydrogen fluoride which is also regulated under the NESHAPS under Title III. The definition under the PSD regulations should also specifically exclude hydrogen fluoride already regulated under Title III, in accordance with the 1990 Amendments. (ALC)

Response: IDEM recommends that the rule continue to regulate the hazardous air pollutants that are specifically listed under the definition of "significant" in 326 IAC 2-2-1(xx). Indiana's PSD program regulates fluorides, including hydrogen fluoride, at major sources or modifications if emissions are above three tons per year. Section 112 does not typically regulate pollutants at levels less than ten tons per year. Hydrogen fluoride is a colorless gas that can cause severe respiratory damage with acute exposure and irritation and congestion of the nose, throat, and bronchi at low, chronic levels of exposure. IDEM has consistently recommended that the PSD program continue to regulate the specifically listed toxic air pollutants including, among others: asbestos, beryllium, mercury, and fluorides. Therefore hydrogen fluoride has not been excluded from fluorides in 326 IAC 2-2-1(xx)(L) and 326 IAC 2-2-4(b)(2)(A).

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326 IAC 2-7-10.5
326 IAC 2-7-11
326 IAC 2-7-12

SECTION 1. 326 IAC 2-1.1-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-7 Fees

Authority: **IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-8**
Affected: **IC 13-15; IC 13-16-2; IC 13-17**

Sec. 7. The applicant shall pay a fee based upon the cost to the commissioner of processing and reviewing the applicable registration, permit, or operating permit revision application and the cost of determining compliance with the terms and conditions of a permit. Except for sources identified in subdivision

(5)(A), (5)(B), or (5)(E), sources subject to 326 IAC 2-7-19 are exempt from the fees established by subdivisions (1) and (4) through (6). Sources that have received a permit ~~pursuant to~~ **under** 326 IAC 2-8 are exempt from the fees established by subdivisions (1) and (4) through (6), except to the extent provided in 326 IAC 2-8-16. Sources subject to 326 IAC 2-9 are exempt from the fees established by subdivision (1). The fees are established as follows:

(1) A basic filing fee of one hundred dollars ($100) shall be submitted with any application submitted to the commissioner for review in accordance with this article.

(2) A fee of five hundred dollars ($500) shall be submitted upon billing for:

(A) a registration under 326 IAC 2-5.1-2;

(B) a minor permit revision under 326 IAC 2-6.1-6(g) or 326 IAC 2-8-11.1(d); or

(C) a modification under 326 IAC 2-7-10.5(d).

(3) At the time the notice of a proposed permit, modification approval, or permit revision is published under 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-8-11.1(f), or a modification under 326 IAC 2-7-10.5(f), permit or significant permit revision fees shall be assessed as follows:

(A) A construction permit, modification approval, or significant permit revision approval fee of three thousand five hundred dollars ($3,500) shall be submitted upon billing for those sources subject to 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-7-10.5(f), or 326 IAC 2-8-11.1(f). The fee assessed under subdivision (1) shall be credited toward this fee.

(B) A construction permit fee of six thousand dollars ($6,000) shall be submitted upon billing for those applications requiring review for PSD requirements under 326 IAC 2-2 or emission offset under 326 IAC 2-3. The fees assessed under subdivision (1) and clause (A) shall be credited toward this fee.

(C) Air quality analyses fees shall be assessed as follows:

(i) A fee of three thousand five hundred dollars ($3,500) shall be submitted upon billing if an air quality analysis is required under 326 IAC 2-2-4 or 326 IAC 2-3-3.

(ii) In lieu of the fee under item (i), a fee of six thousand dollars ($6,000) shall be submitted upon billing for an air quality analysis per pollutant performed by the commissioner upon request of the source owner or operator. The commissioner may deny a request to perform an air quality analysis.

(D) Fees for control technology analyses for best available control technology (BACT) under 326 IAC 2-2-3, ~~or~~ lowest achievable emission rate (LAER) under 326 IAC 2-3-3, **or comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2** shall be assessed as follows per emissions unit or group of identical emissions units for which a control technology analysis is required:

(i) A fee of three thousand dollars ($3,000) shall be submitted upon billing if two (2) to five (5) control technology analyses are required.

(ii) A fee of six thousand dollars ($6,000) shall be submitted upon billing if six (6) to ten (10) control technology analyses are required.

(iii) A fee of ten thousand dollars ($10,000) shall be submitted upon billing if more than ten (10) control technology analyses are required.

(E) Miscellaneous fees to cover technical and administrative costs shall be assessed as follows:

(i) A fee of five hundred dollars ($500) shall be submitted upon billing for each review for an applicable national emission standard for hazardous air pollutants under 326 IAC 14 or 326 IAC 20 or an applicable new source performance standard under 326 IAC 12.

(ii) A fee of five hundred dollars ($500) shall be submitted upon billing for each public hearing conducted prior to issuance of the permit or modification approval.

(iii) A fee of six hundred dollars ($600) shall be submitted upon billing for each control technology analysis for BACT for volatile organic compounds under 326 IAC 8-1-6 and for maximum achievable control technology under 326 IAC 2-4.1.

(F) Fees for establishing a plantwide applicability limitation (PAL) in a PAL permit shall be assessed as follows:

(i) A separate fee shall be assessed for each PAL pollutant.

(ii) The fee for each PAL pollutant shall be assessed at forty dollars ($40) per ton of the allowable emissions for that PAL pollutant.

(iii) The maximum combined fee for all PAL pollutants shall not exceed forty thousand dollars ($40,000).

(4) Annual operating permit fees shall be assessed as follows:

(A) A basic permit fee of two hundred dollars ($200) shall be submitted upon billing for each operating permit required under 326 IAC 2-6.1.

(B) A fee of six hundred dollars ($600) shall be submitted upon billing for each source with a potential to emit greater than five (5) tons per year of lead.

(C) A fee of one hundred dollars ($100) shall be submitted upon billing for a relocation approval for a portable source.

(5) In lieu of fees assessed under subdivision (4), annual operating permit fees shall be assessed for identified source categories as follows:

(A) During the years 1995 through 1999 inclusive, a fee of fifty thousand dollars ($50,000), less any amount credited under this clause, shall be charged to an electric power plant for a Phase I affected unit, as identified in Table A of Section 404 of the CAA, or for a substitution unit as determined by the U.S. EPA in accordance with Section 404 of the CAA. Any fees paid by that plant for non-Phase I units under 326 IAC 2-7-19 shall be credited toward this fee. Prior to 1995, a fee of three thousand dollars ($3,000) shall be submitted upon billing by the sources described in this clause. The existence of a Phase I unit at an electric

power plant does not affect the plant's duty to pay fees for non-Phase I units at the plant.

(B) A fee for each coke plant equal to the costs to the commissioner associated with conducting the surveillance activities required to determine compliance with 40 CFR **Part** 63, Subpart L* shall be submitted upon billing. Any fee collected under this clause shall not exceed one hundred twenty-five thousand dollars ($125,000).

(C) A fee of six hundred dollars ($600) shall be submitted upon billing for each surface coal mining operation per mining area or pit.

(D) A fee of two hundred dollars ($200) shall be submitted upon billing for each grain terminal elevator as defined in 326 IAC 1-2-33.2.

(E) A fee of twenty-five thousand dollars ($25,000) shall be submitted upon billing for a municipal solid waste incinerator with capacity greater than two hundred fifty (250) tons per day.

(6) In addition to the fees assessed under subdivisions (1) through (5), miscellaneous fees to cover technical and administrative costs shall be assessed to sources subject to this section except for sources subject to fees established in subdivision (5)(A), (5)(B), or (5)(E) as follows:

(A) A fee of one thousand four hundred dollars ($1,400) shall be submitted upon billing for any air quality network required by permit.

(B) A fee of seven hundred dollars ($700) shall be paid for review under 326 IAC 3 of any source sampling test required by permit, per emissions unit. This fee shall be paid upon submittal of a protocol for the stack test as required by 326 IAC 3.

(C) A fee of two hundred dollars ($200) shall be submitted upon billing for each opacity or pollutant continuous emission monitor required by permit.

(7) Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to "Cashier, Indiana Department of Environmental Management" no later than thirty (30) days after receipt of billing. Nonpayment may result in denial of a permit application or revocation of the permit.

(8) If an annual fee is being paid under a fee payment schedule established under IC 13-16-2, the fee shall be paid in accordance with that schedule. Establishment of a fee payment schedule must be consistent with IC 13-16-2, including the determination that a single payment of the entire fee is an undue hardship on the person and that the commissioner is not required to assess installments separately. Failure to pay in accordance with the fee payment schedule that results in substantial nonpayment of the fee may result in revocation of the permit.

(9) Fees are nonrefundable. If the permit is denied or revoked or the source or emissions unit is shut down, the fees shall neither be refunded nor applied to any subsequent application or reapplication.

(10) If a permit becomes lost or damaged, a replacement may be requested.

(11) The commissioner may adjust all fees on January 1 of each calendar year by the Consumer Price Index (CPI) using revision of the CPI that is most consistent with the CPI for the calendar year 1995.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-1.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 991; filed May 21, 2002, 10:20 a.m.: 25 IR 3057)*

SECTION 2. 326 IAC 2-2-1, PROPOSED TO BE AMENDED AT 27 IR 250, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-1 Definitions

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period preceding the particular date and representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit described in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular~~

~~operation; information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.~~

(4) This definition shall not apply for calculating a significant emissions increase under section 2(d) of this rule or for establishing a PAL under 326 IAC 2-2.4. Instead, subsections (e) and (rr) shall apply for those purposes.

(c) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(1) times of visitor use of the federal Class I area; and

(2) the frequency and timing of natural conditions that reduce visibility.

(d) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless a source is subject to enforceable permit limits that restrict the operating rate or hours of operation, or both) and the most stringent of the:

(1) applicable standards as set forth in 40 CFR **Part** 60* and 40 CFR **Part** 61*;

(2) state implementation plan emissions limitation, including those with a future compliance date; or

(3) emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(e) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

(1) For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required by this rule, except that the ten (10) year period shall not include any period earlier than November 15, 1990. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the department has applied the emissions reductions to an attainment demonstration or maintenance plan consistent with the requirements of 326 IAC 2-3-3(b)(14).

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecu-

tive twenty-four (24) month period may be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0) and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated as follows:

(A) For an existing electric utility steam generating unit, in accordance with subdivision (1).

(B) For an existing emissions unit except an existing electric utility steam generating unit, in accordance with subdivision (2).

(C) For a new emissions unit, in accordance with subdivision (3).

~~(e)~~ **(f)** "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu g/m^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1) (D) or 107(d)(1)(E) of the Clean Air Act (CAA) cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR **Part** 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that ~~such~~ **the** baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR **Part** 52.21(b)(14)(iv)*.

~~(f)~~ **(g)** "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. ~~The~~ **A** baseline concentration is determined for each pollutant for which a **minor source** baseline date is established and shall include the following:

(1) The actual emissions, **as defined in this section,** representative of sources in existence on the applicable minor source baseline date except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:

(A) Actual emissions, **as defined in this section,** from any major stationary source on which ~~the~~ construction commenced after the major source baseline date.

(B) Actual emissions increases and decreases, **as defined in this section,** at any stationary source occurring after the minor source baseline date.

~~(g)~~ **(h)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, the term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

~~(h)~~ **(i)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA, which~~ **that** would be emitted from any proposed major stationary source or major modification, that the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard not feasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirements for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

~~(i)~~ **(j)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, for example, ~~which~~ **that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office)*.

~~(j)~~ **(k)** "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(k)~~ **(l)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology or similar projects funded through appropriations for U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(m) "Clean unit" means an emissions unit that meets one (1) of the following criteria:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with the BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-2.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-2.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(l)~~ **(n)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(m)~~ **(o)** "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

~~(n)~~ **(p)** "Construction" means any physical change or change in the method of operation, including:

(1) fabrication;

(2) erection;

(3) installation;

(4) demolition; or

(5) modification;

of an emissions unit, that would result in a change in ~~actual~~ emissions.

(q) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to complete the following:

(1) Sample emissions on a continuous basis.

(2) If applicable, condition emissions.

(3) Analyze emissions on a continuous basis.

(4) Provide a record of emissions on a continuous basis.

(r) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(s) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) record the average operational parameter value on a continuous basis.

~~(o)~~ **(t)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(p)~~ **(u)** "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the CAA.~~ **For purposes of this rule, there are the following two (2) types of emissions units:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1). A replacement unit is an existing emissions unit.

~~(q)~~ **(v)** "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over ~~such~~ **the** lands.

(w) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(r)~~ **(x)** "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(s)~~ **(y)** "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

~~(t)~~ **(z)** "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

~~(u)~~ **(aa)** "Indian reservation" means any federally recognized reservation established by:

(1) treaty;

(2) agreement;

(3) executive order; or

(4) act of Congress.

~~(v)~~ **(bb)** "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(cc) "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the most stringent emissions limitation that is as follows:

(1) Contained in the state implementation plan for the class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

(2) Achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(w)~~ **(dd)** "Low terrain" means any area other than high terrain.

~~(x)~~ **(ee)** "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase ~~of any pollutant that is being regulated under the CAA~~ **and a significant net emissions increase of a regulated NSR pollutant from the major stationary source.** The following shall apply:

(1) Any ~~net~~ **significant** emissions increase **from any emissions units or net emissions increase at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(C) Use of an alternative fuel by reason of an order under Section 125 of the CAA.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source that the source:

(i) was capable of accommodating before January 6, 1975, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition that was established after January 6, 1975, pursuant to:

(AA) 40 CFR **Part** 52.21*;

(BB) this rule;
(CC) 326 IAC 2-3; or
(DD) minor new source review regulations approved pursuant to 40 CFR **Part** 51.160 through 40 CFR **Part** 51.166*; or

(ii) is approved to use under any permit issued under 40 CFR **Part** 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR **Part** 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project ~~as defined in subsection (dd)~~ at an existing ~~electric steam generating~~ **emissions** unit ~~unless:~~

~~(i) the commissioner and U.S. EPA determine that such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(ii) the commissioner determines that the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9).~~ **meeting the requirements of 326 IAC 2-2.3. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.**

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

~~(y)~~ **(ff)** "Major source baseline date" means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(2) In the case of nitrogen dioxide, February 8, 1988.

~~(z)~~ **(gg)** "Major stationary source" means the following:

(1) Any of the following stationary sources of air pollutants that are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and that emit or have the potential to emit one hundred (100) tons per year or more of any **regulated NSR** pollutant: ~~subject to regulation under the CAA:~~

(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(B) Coal cleaning plants (with thermal driers).
(C) Kraft pulp mills.
(D) Portland cement plants.
(E) Primary zinc smelters.
(F) Iron and steel mill plants.
(G) Primary aluminum ore reduction plants.
(H) Primary copper smelters.
(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.
(J) Hydrofluoric, sulfuric, and nitric acid plants.
(K) Petroleum refineries.
(L) Lime plants.
(M) Phosphate rock processing plants.
(N) Coke oven batteries.
(O) Sulfur recovery plants.
(P) Carbon black plants (furnace process).
(Q) Primary lead smelters.
(R) Fuel conversion plants.
(S) Sintering plants.
(T) Secondary metal production plants.
(U) Chemical process plants.
(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(W) Taconite ore processing plants.
(X) Glass fiber processing plants.
(Y) Charcoal production plants.
(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.

(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelters.
(B) Secondary lead smelters.
(C) Primary copper smelters.
(D) Lead gasoline additive plants.
(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of

twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).

(6) Notwithstanding subdivisions (1) through (5), a source or modification of a source shall not be considered a major stationary source if it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and ~~such~~ **the** source does not belong to any of the categories listed in subdivision (1) or any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 42 U.S.C. 7412).

(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(aa)~~ **(hh)** "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR **Part** 52.21* submits a complete application under the relevant regulations, including the following:

(1) The trigger date is the following:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.

(B) In the case of nitrogen dioxide, February 8, 1988.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the commissioner may rescind a minor source baseline date where it can be shown, to the satisfaction of the commissioner, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

~~(bb)~~ **(ii)** "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and air quality control laws and regulations that are part of the state implementation plan.

~~(cc)~~ **(jj)** "Net emissions increase", with ~~reference to a significant net emissions increase, means, the tons per year amount by which the sum of the following exceeds zero (0)~~ **respect to any regulated NSR pollutant emitted by a major stationary source, means the following:**

(1) ~~Any~~ **The amount by which the sum of the following exceeds zero (0):**

(A) The increase in ~~actual~~ emissions from a particular physical change or change in the method of operation at a **stationary** source **as calculated under section 2(d) of this rule.**

~~(2)~~ **(B)** Any other increases and decreases in actual emissions at the **major stationary** source that are contemporaneous with the particular change and are otherwise creditable. ~~as follows:~~ **Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (e), except that subsection (e)(1)(C) and (e)(2)(D) shall not apply.**

~~(A)~~ **(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date:

~~(i)~~ **(A)** five (5) years before construction on the particular change commences; and

~~(ii)~~ **(B)** that the increase from the particular change occurs.

~~(B)~~ **(3)** An increase or decrease in actual emissions is creditable only if:

(A) the department has not relied on the increase or decrease in **actual emissions in** issuing a permit ~~for~~ **to** the source under **40 CFR Part 52.21* or** this rule and the permit is in effect when the increase in actual emissions from the particular change occurs; **and**

(B) the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-2.2-1(h) and 326 IAC 2-2.2-2(j).

~~(C)~~ **(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. ~~With respect to particulate matter, only PM_{10} emissions shall be used to evaluate the net emissions increase for PM_{10}.~~

~~(D)~~ **(5)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(E)~~ **(6)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(A)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(B)** it is enforceable **as a practical matter** at and after the time that actual construction on the particular change begins; ~~and~~

~~(iii)~~ **(C)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(D) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emission reductions that were not relied upon in a PCP excluded under 326 IAC 2-2.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-2.3-1(g)(4) for the PCP and 326 IAC 2-2.2-1(h) and 326 IAC 2-2.2-2(j) for a clean unit.

~~(F)~~ **(7)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(8) Subsection (b)(1) shall not apply for determining creditable increases and decreases.

(kk) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

~~(dd)~~ **(ll)** "Pollution control project" **or "PCP"** means ~~for purposes of this rule,~~ any activity, **set of work practices,** or project, **including pollution prevention** undertaken at an existing ~~electric utility steam generating unit for purposes of reducing~~ emissions ~~from such~~ unit ~~Such~~ **that reduces emissions of air pollutants from the unit. The qualifying** activities or projects ~~are limited to the following:~~ **can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-2.3-1(c) and 326 IAC 2-2.3-1(f). The following projects are presumed to be environmentally beneficial under 326 IAC 2-2.3-1(c)(1):**

(1) ~~The installation of~~ Conventional or ~~innovative pollution control technology, including, but not limited to, the following:~~

~~(A)~~ advanced flue gas desulfurization **or**

~~(B)~~ sorbent injection for **control of** sulfur dioxide. ~~and nitrogen oxides controls:~~

~~(C) Electrostatic precipitators.~~

~~(2) An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to the following:~~

~~(A) Natural gas or coal reburning.~~

~~(B) The cofiring of natural gas and other fuels for the purpose of controlling emissions.~~

~~(3) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*, or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000), for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA.~~

~~(4) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(3) Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion engines, and oxidation/absorption catalyst for control of nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel to be limited to the following fuel switches:

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting sub-

stance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(mm) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal, through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain in-process recycling practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(ee)~~ **(nn)** "Potential to emit" means the maximum capacity of a **stationary** source ~~or major modification~~ to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable **as a practical matter.** Secondary emissions do not count in determining the potential to emit of a **stationary** source.

(oo) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to, on a continuous basis:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate, such as pounds per hour.

(pp) "Prevention of significant deterioration program" or "PSD program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the requirements of 40 CFR Part 51.166* or the program in 40 CFR Part 52.21*. Any permit issued under the program is a major NSR permit.

(qq) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(rr) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under this subsection, before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved state implementation plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an

existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (e) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (nn).

~~(ff)~~ **(ss)** "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the CAA Amendments of 1990, and the emissions from ~~such~~ **the** unit continue to be carried in the department's emissions inventory at the time of enactment;

(2) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

(tt) "Reasonably available control technology" or "RACT" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(1) the necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;

(2) the social, environmental, and economic impact of the controls; and

(3) alternative means of providing for attainment and maintenance of the standard.

(uu) "Regulated NSR pollutant" means any of the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the pollutants identified by the U.S. EPA.

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA.

(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the CAA.

(4) Any pollutant that otherwise is subject to regulation under the CAA, except that any or all hazardous air pollutants either listed in Section 112 of the CAA or added to the list pursuant to Section 112(b)(2) of the CAA, which have not been delisted pursuant to Section 112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the CAA.

(5) Notwithstanding subdivision (4), any pollutant listed in subsection (xx)(1)(A) through (xx)(1)(U).

~~(gg)~~ **(vv)** "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.

(5) Integrated gasification fuel cells.

(6) As determined by U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

~~Repowering~~ **The term** shall also include any oil or gas-fired unit, or both, that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the CAA.

~~(hh) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:~~

~~(1) Consider all relevant information, including, but not limited to, the following:~~

~~(A) Historical operational data.~~

~~(B) The company's own representations.~~

~~(C) Filings with Indiana or federal regulatory authorities.~~

~~(D) Compliance plans under Title IV of the CAA.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particu-~~

~~lar change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

~~(ii)~~ **(ww)** "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the source or modification that causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

(1) the tailpipe of a motor vehicle;
(2) a train; or
(3) a vessel.

~~(jj)~~ **(xx)** "Significant" means the following:

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(A) Carbon monoxide: one hundred (100) tons per year.
(B) Nitrogen oxides: forty (40) tons per year.
(C) Sulfur dioxide: forty (40) tons per year.
(D) Particulate matter: twenty-five (25) tons per year.
(E) PM_{10}: fifteen (15) tons per year.
(F) Ozone: forty (40) tons per year of volatile organic compounds.
(G) Lead: six-tenths (0.6) ton per year.
(H) Asbestos: seven one-thousandths (0.007) ton per year.
(I) Beryllium: four ten-thousandths (0.0004) ton per year.
(J) Mercury: one-tenth (0.1) ton per year.
(K) Vinyl chloride: one (1) ton per year.
(L) Fluorides: three (3) tons per year.
(M) Sulfuric acid mist: seven (7) tons per year.
(N) Hydrogen sulfide (H_2S): ten (10) tons per year.
(O) Total reduced sulfur (including H_2S): ten (10) tons per year.
(P) Reduced sulfur compounds (including H_2S): ten (10) tons per year.
(Q) Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.
(R) Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.
(S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.
(T) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.
(U) Ozone-depleting substances (ODS): one hundred (100) tons per year.
(V) Any **regulated NSR** pollutant ~~subject to regulation under the CAA,~~ other than the pollutants listed in this subsection: ~~or under Section 112(b) of the CAA*:~~ any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on ~~such~~ **the** area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(yy) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in subsection (xx), for that pollutant.

~~(kk)~~ **(zz)** "Stationary source" means any building, structure, facility, or installation that emits or may emit ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~ A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes or from a nonroad engine or nonroad vehicle.

~~(ll)~~ **(aaa)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that:

(1) is operated for a period of five (5) years or less; and
(2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)*

SECTION 3. 326 IAC 2-2-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-2 Applicability

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 2. **(a) The requirements of sections 3 through 5, 7, 8, 10, 14, and 15 of this rule apply to the construction of any**

new major stationary source or the major modification of any existing major stationary source except as this rule otherwise provides.

~~(a)~~ **(b)** The requirements of this rule ~~shall~~ apply to **the construction of** any **new** major stationary source or **any project at an existing** major ~~modification, as defined in section 1 of this rule, that is being constructed or will be constructed~~ **stationary source** in an area designated as ~~of the submittal date of a complete application in accordance with 326 IAC 2-5.1, as~~ attainment or unclassifiable in 326 IAC 1-4.

~~(b) The owner or operator of a~~ **(c) No new** major stationary source or major modification **to which the requirements of sections 3 through 5, 7, 8(a), 10, 14, and 15 apply** shall ~~not~~ begin actual construction ~~unless~~ **without a permit that states that the major stationary source or major modification will meet** the requirements ~~in~~ **of** sections 3 through ~~8,~~ **5, 7, 8(a),** 10, ~~and~~ 14, ~~through 16~~ **and 15** of this rule. ~~have been met and a permit has been issued under this rule.~~

(d) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (e) and (f), and consistent with the definition of major modification contained in section 1(ee) of this rule, a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating if a significant emissions increase will occur depends upon the type of emissions units being modified as provided in subdivisions (3) through (6). The procedure for calculating, before beginning actual construction, if a significant net emissions increase will occur at the major stationary source is contained in section 1(jj) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is considered to occur.

(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(e) For any major stationary source for which a PAL has been established for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 326 IAC 2-2.4.

(f) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-2.3.

~~(c)~~ **(g)** Sources that are located in or proposed to be located in an area designated as nonattainment ~~pursuant to~~ **under** 326 IAC 1-4 for a pollutant shall be exempt from the requirements of this rule for that particular pollutant **and subject to 326 IAC 2-3.**

~~(d)~~ **(h)** A source or modification of a source that **is or** would be a nonprofit health or nonprofit educational institution shall be exempt from the requirements of sections 3, 4, and 7 of this rule.

~~(e) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as otherwise provided in this rule.~~

~~(f)~~ **(i)** The requirements of sections 3 ~~4,~~ **through** 5, 7, 8, 10, 14, and 15 of this rule do not apply to a particular major stationary source or major modification if the source or modification is a portable stationary source that has previously received a permit under 326 IAC 2-5.1-3 or 326 IAC 2-7 and the permit contains conditions from 40 CFR Part 52.21* or this rule if:

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

(3) emissions from the source would impact no Class I area and no area where an applicable increment is known to be

violated; and

(4) ten (10) days' advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1098; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 4. 326 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-3 Control technology review; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 3. Any owner or operator of a major stationary source or major modification shall comply with the following requirements:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Part 60* and 40 CFR Part 61*.

(2) A new, major stationary source shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the source has the potential to emit in significant amounts as defined in section 1 of this rule.

(3) A major modification shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the modification would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase of the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time, which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At ~~such~~ **this** time, the owner or operator of the applicable source may be required to demonstrate the adequacy of any previous determination of best available control technology for that source.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 5. 326 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-4 Air quality analysis; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any application for a permit under the provisions of this rule **or for a clean unit designation under 326 IAC 2-2.2-2** shall contain an analysis of ambient air quality in the area that the major stationary source, ~~or~~ major modification, **or clean unit** would affect for each of the following pollutants:

(1) For a source, each **regulated NSR** pollutant ~~regulated under the provisions of the CAA~~ that the source would have the potential to emit in a significant amount.

(2) For a modification, each **regulated NSR** pollutant ~~regulated under the provision of the CAA~~ for which the modification would result in a significant net emissions increase.

(3) For a clean unit designation, each regulated NSR pollutant emitted by the unit for which the owner or operator requests the department to designate the unit as a clean unit.

(b) Exemptions are as follows:

(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification would:

(A) impact no Class I area and no area where an applicable increment is known to be violated; and

(B) be temporary.

(2) A source, ~~or~~ modification, **or clean unit designation** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if **either of the following apply:**

(A) The emissions increase of the pollutant from a new source, ~~or~~ the net emissions increase of the pollutant from a modification, **or the allowable emission rate on which the clean unit designation is based,** would cause, in any area, air quality impacts less than:

(i) Carbon monoxide: 575 $\mu g/m^3$, 8-hour average.

(ii) Nitrogen dioxide: 14 $\mu g/m^3$, annual average.

(iii) PM_{10}: 10 µg/m^3, 24-hour average.
(iv) Sulfur dioxide: 13 µg/m^3, 24-hour average.
(v) Ozone: No de minimis air quality level is provided for ozone; however, any net increase of one hundred (100) tons per year or more of volatile organic compounds subject to PSD would be required to provide ozone ambient air quality data.
(vi) Lead: 0.1 µg/m^3, 3-month average.
(vii) Mercury: 0.25 µg/m^3, 24-hour average.
(viii) Beryllium: 0.001 µg/m^3, 24-hour average.
(ix) Fluorides: 0.25 µg/m^3, 24-hour average.
(x) Vinyl chloride: 15 µg/m^3, 24-hour average.
(xi) Total reduced sulfur: 10 mg/m^3, 1-hour average.
(xii) Hydrogen sulfide: 0.2 µg/m^3, 1-hour average.
(xiii) Reduced sulfur compounds: 10 µg/m^3, 1-hour average.

(B) The concentrations of the pollutant in the area that the source, ~~or~~ modification, **or clean unit designation** would affect are less than the concentrations listed in clause (A) or the pollutant is not listed in clause (A).

(c) All monitoring required by this section shall be done in accordance with the following provisions:

(1) With respect to any pollutant for which no ambient air quality standard designated in 326 IAC 1-3 exists, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(2) With respect to any pollutant (other than nonmethane hydrocarbons) for which an ambient air quality standard as designated in 326 IAC 1-3 does exist, the analysis shall contain continuous air quality monitoring data gathered for the purpose of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(3) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year preceding receipt of the application, except that, if the commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(4) The owner or operator of the proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV* may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

(5) The owner or operator of a major stationary source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect of the emissions ~~which~~ **that** the source or modification may have, or are having, on air quality in any area.

(6) The owner or operator of a major stationary source or major modification shall comply with the requirements of 40 CFR Part 58, Appendix B* during operation of monitoring stations for purposes of complying with this section.

(7) All air quality monitoring shall be done in accordance with state and federal monitoring procedures as set forth in the following references: May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007)* and the May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual*".

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2396; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3026; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1099; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2420; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1565)*

SECTION 6. 326 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-5 Air quality impact; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. (a) The owner or operator of the proposed major stationary source or major modification shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of **any:**

(1) ~~any~~ ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or

(2) ~~any~~ applicable maximum allowable increase over the baseline concentration in any area **as described in section 6 of this rule.**

(b) The owner or operator that requests a clean unit designation under 326 IAC 2-2.2-2 shall demonstrate that the allowable emissions rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of any:

(1) ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or

(2) applicable maximum allowable increase over the baseline concentration in any area.

~~(b)~~ **(c)** The requirements of this section shall not apply to a major stationary source or major modification with respect to a

particular pollutant if the allowable emissions of that pollutant from the new source or the net emissions increase of that pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

~~(c)~~ **(d)** The requirements of this section do not apply to a major stationary source or major modification with respect to total suspended particulate matter.

~~(d)~~ **(e)** Air quality impact analysis required by this section shall be conducted in accordance with the following provisions:

(1) Any estimates of ambient air concentrations used in the demonstration processes required by this section shall be based upon the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models)*.

(2) Where an air quality impact model specified in the guidelines cited in subdivision (1) is inappropriate, a model may be modified or another model substituted provided that all applicable guidelines are satisfied.

(3) Modifications or substitution of any model may only be done in accordance with guideline documents and with written approval from U.S. EPA and shall be subject to public comment procedures set forth in 326 IAC 2-1.1-6.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2024; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1566)*

SECTION 7. 326 IAC 2-2-6, PROPOSED TO BE AMENDED AT 27 IR 256, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 6. (a) Any demonstration under section 5 of this rule ~~should~~ **shall** demonstrate that increased emissions caused by the proposed major stationary source or major modification will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). Available maximum allowable increases are determined by adjusting the MAI to include impacts from actual emissions:

(1) from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

(b) Increment consumption shall be in accordance with the following:

(1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the CAA). Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR Part 52.21* **to which it** must be adhered. ~~to.~~ New permits issued after January 1, 1995, shall use PM_{10} as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, $\mu g/m^3$ Limits)
(A) Particulate matter:	
(PM_{10}):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources that have converted from the use of petroleum products or natural gas, or both, by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the

emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by state implementation plan revisions approved by U.S. EPA are excluded provided the following criteria is met:

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner and the U.S. EPA.

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase that would impact a Class I area or an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) that will ensure that the emissions levels will not exceed those levels occurring from such source before the exclusion was granted.

(5) No exclusion of such a concentration under subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted under this rule. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567)*

SECTION 8. 326 IAC 2-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-7 Additional analysis; requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 7. (a) The owner or operator shall provide an analysis of the following:

(1) Impairment to visibility, soils, and vegetation that would occur as a result of the major stationary source, ~~or~~ major modification, **or clean unit designation** and general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit.** The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit designation.**

(b) The requirements of this section shall not apply to a major stationary source or major modification as defined in section 1 of this rule, with respect to a particular pollutant, if the allowable emissions of that pollutant from the source or the net emissions increase of the pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

(Air Pollution Control Board; 326 IAC 2-2-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2399; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568)

SECTION 9. 326 IAC 2-2-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-8 Source obligation

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 8. **(a)** The following shall apply to any owner or operator who proposes to construct, constructs, or operates a major stationary source or major modification subject to this rule:

(1) Approval to construct, ~~pursuant to~~ **under** section 2(b) of this rule, shall become invalid if construction is not commenced within eighteen (18) months after receipt of ~~such~~ **the** approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(2) Approval for construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

(3) At ~~such~~ **the** time ~~as~~ a particular source or modification becomes a major stationary source or major modification

solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(b) The following provisions apply to projects at an existing emissions unit at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(rr)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of any emissions unit whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(rr)(2)(A)(iii) of this rule; and

(iv) an explanation for why the amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or the potential to emit that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1) exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount, as defined in section 1(xx) of this rule, for that regulated NSR pollutant and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) The emissions calculated under the actual-to-projected actual test stated in section 2(d)(3) of this rule.

(D) Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.

(c) The owner or operator of the source shall make the information required to be documented and maintained under subsection (b) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 326 IAC 17.1. *(Air Pollution Control Board; 326 IAC 2-2-8; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2400; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424)*

SECTION 10. 326 IAC 2-2-10 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-10 Source information

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 10. The owner or operator of a proposed major stationary source, ~~or~~ major modification, **or an owner or operator that requests a clean unit designation** shall submit all information necessary to perform any analysis or make any determination required under this rule **or under the clean unit designation requirements** as follows:

(1) With respect to a source or modification to which this rule applies, such information shall include:

(A) a description of the nature, location, design capacity, and typical operating schedule of the major stationary

source or major modification, including specifications and drawings showing its design and plant layout;

(B) a detailed schedule for construction of the major stationary source or major modification; and

(C) a detailed description as to what system of continuous emission reduction is planned for the major stationary source or major modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the commissioner, the owner or operator shall also provide information on **the following:**

(A) The air quality impact of the major stationary source or major modification, including meteorological and topographical data necessary to estimate such impact. ~~and~~

(B) The air quality impact and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area that the major stationary source or major modification would affect.

(Air Pollution Control Board; 326 IAC 2-2-10; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425)

SECTION 11. 326 IAC 2-2.2 IS ADDED TO READ AS FOLLOWS:

Rule 2.2. Clean Unit Designations in Attainment Areas

326 IAC 2-2.2-1 Clean unit designation for emission units subject to BACT or LAER

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to this section. The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6).

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both the following requirements:

(A) The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to

install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing new control technology to meet current-day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day BACT under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with BACT or LAER, and any physical or operational characteristic that formed the basis for the BACT or LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance with the emission limitation and work practice requirements adopted in conjunction with the BACT or LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in subsection (f)(4).

(2) The clean unit must be in compliance with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions

using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

If the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-2.2-1)*

326 IAC 2-2.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this section. The provisions of this section apply to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to BACT, as determined by the department in accordance with this section. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit.

The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than BACT, as defined in 326 IAC 2-2-1(i), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional BACT determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions unit, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The approval must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7-12:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the effective date. When the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that

will determine the expiration date. When the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must comply with all emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT as specified in subsection (h)(4).

(3) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(4) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

If the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(c)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-2.2-2)*

SECTION 12. 326 IAC 2-2.3 IS ADDED TO READ AS FOLLOWS:

Rule 2.3. Pollution Control Project Exclusion Procedural Requirements in Attainment Areas

326 IAC 2-2.3-1 Pollution control project exclusion procedural requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department if the project is listed in 326 IAC 2-2-1(ll), or, if the project is not listed in 326 IAC 2-2-1(ll), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the

information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-2-1(ll) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-2-2(d) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project. An air quality impact analysis required for any pollutant that will experience a significant emissions increase as a result of the project shall be performed in accordance with 326 IAC 2-2-4 and 326 IAC 2-2-5.

(e) For projects listed in 326 IAC 2-2-1(ll), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-2-1(ll), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the approval.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if the reductions are surplus, quantifiable, and permanent.

(Air Pollution Control Board; 326 IAC 2-2.3-1)

SECTION 13. 326 IAC 2-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Actuals Plantwide Applicability Limitations in Attainment Areas

326 IAC 2-2.4-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions in this rule govern actuals plantwide applicability limitations (PAL). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this rule.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, that meets the requirements in this rule, and that complies with the PAL permit:
(1) is not a major modification for the PAL pollutant;
(2) does not have to be approved through 326 IAC 2-2; and
(3) is not subject to 326 IAC 2-2-8(a)(3).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-1)*

326 IAC 2-2.4-2 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-2-1 or in the CAA.

(b) "Actuals PAL", for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions", for the purposes of this rule, means the following:
(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:
(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;
(B) state implementation plan emissions limitation, including those with a future compliance date; or
(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
(3) An emissions unit's potential to emit shall be determined using the definition in 326 IAC 2-2-1.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit one hundred (100) tons per year or more of the PAL pollutant in an attainment area.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL under section 11 of this rule is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase in 326 IAC 2-2-1, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.4-2)*

326 IAC 2-2.4-3 Permit application requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-3)

326 IAC 2-2.4-4 General requirements for establishing PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) regulated NSR pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-4)*

326 IAC 2-2.4-5 Public participation requirements for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be:

(1) established;
(2) renewed;
(3) increased;
(4) terminated; or
(5) revoked;

through 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-2.4-5)*

326 IAC 2-2.4-6 Establishing a 10 year actuals PAL level
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at

the source plus an amount equal to the applicable significant level for the PAL pollutant under 326 IAC 2-2-1(xx) or under the CAA, whichever is lower.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions in accordance with 326 IAC 2-2-1(e) for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units, except modifications to existing units, on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-2.4-6)*

326 IAC 2-2.4-7 Contents of the PAL permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-2.4-7)

326 IAC 2-2.4-8 PAL effective period and reopening of the PAL permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:

(A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source under the state implementation plan.

(C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-8)

326 IAC 2-2.4-9 Expiration of a PAL

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if the change meets the definition of major modification in 326 IAC 2-2-1(ee).

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-2-8(a)(3), but were eliminated by the PAL in accordance with section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-9)*

326 IAC 2-2.4-10 Renewal of a PAL

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of PAL expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subdivisions (1) and (2). However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:

(A) air quality needs;

(B) advances in control technology;

(C) anticipated economic growth in the area;

(D) desire to reward or encourage the source's voluntary emissions reductions; or

(E) other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. *(Air Pollution Control Board; 326 IAC 2-2.4-10)*

326 IAC 2-2.4-11 Increasing a PAL during the PAL effective period

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 11. (a) The department may increase a PAL emission limitation during the PAL effective period only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-11)*

326 IAC 2-2.4-12 Monitoring requirements for PALs

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.

(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:

(A) that meets subdivision (1); and

(B) if it is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.

(3) CPMS or PEMS.

(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL

pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or

(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

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326 IAC 2-2.4-13 Record keeping requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

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326 IAC 2-2.4-14 Reporting and notification requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports to the department of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-2.4-14)*

326 IAC 2-2.4-15 Termination and revocation of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-

wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-2.4-15)*

SECTION 14. 326 IAC 2-2.6 IS ADDED TO READ AS FOLLOWS:

Rule 2.6. Federal NSR Requirements for Sources Subject to P.L.231-2003, SECTION 6, Endangered Industries

326 IAC 2-2.6-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to any source that meets both of the following criteria in this section:

(1) A source that belongs to industrial categories that function under the following Standard Industrial Classification (SIC) codes:

(A) Blast furnaces and steel mills (3312).
(B) Gray and ductile iron foundries (3321).
(C) Malleable iron foundries (3322).
(D) Steel investment foundries (3324).
(E) Steel foundries (3325).
(F) Aluminum foundries (3365).
(G) Copper foundries (3366).
(H) Nonferrous foundries (3369).

(2) A source belonging to an industry listed in subdivision (1) that experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(Air Pollution Control Board; 326 IAC 2-2.6-1)

326 IAC 2-2.6-2 Procedure for obtaining a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Until July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements except the substitutions in subsection (b):

(1) 326 IAC 2-2.
(2) 326 IAC 2-2.2.
(3) 326 IAC 2-2.3.
(4) 326 IAC 2-2.4.
(5) 326 IAC 2-3.
(6) 326 IAC 2-3.2.
(7) 326 IAC 2-3.3.
(8) 326 IAC 2-3.4.

(b) The following substitutions shall be made for provisions in the rules in subsection (a):

(1) For the clean unit potential to emit limit:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-1(f)(4)	40 CFR Part 52.21(x)(6)(iv)*
326 IAC 2-2.2-1(g)(1)	40 CFR Part 52.21(x)(7)(i)*
326 IAC 2-2.2-2(h)(4)	40 CFR Part 52.21(y)(8)(iv)*
326 IAC 2-2.2-2(i)(2)	40 CFR Part 52.21(y)(9)(ii)*
326 IAC 2-3.2-1(f)(4)	40 CFR Part 51.165(c)(6)(iv)*
326 IAC 2-3.2-1(g)(1)(A)	40 CFR Part 51.165(c)(7)(i)(A)*
326 IAC 2-3.2-2(h)(4)	40 CFR Part 51.165(d)(8)(iv)*
326 IAC 2-3.2-2(i)(2)	40 CFR Part 51.165(d)(9)(ii)*

(2) For the clean unit retroactive designation and comparability analysis:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-2(d)(1)	40 CFR Part 52.21(y)(4)(i)*
326 IAC 2-2.2-2(f)	40 CFR Part 52.21(y)(6)*
326 IAC 2-3.2-2(d)(1)	40 CFR Part 51.165(d)(4)(i)*
326 IAC 2-3.2-2(f)	40 CFR Part 51.165(d)(6)*

(c) The owner or operator of a source subject to this rule shall also comply with the federal provisions in 40 CFR Part 52.21(y)(4)(iii)(A) and 40 CFR Part 51.165(d)(4)(iii)(A).

(d) In addition to subsections (a) and (b), the source shall submit to the department evidence that the industry to which the source belongs, based on the Standard Industrial Classification listed in section 1(1) of this rule, experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(e) After July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements:

(1) 326 IAC 2-2.
(2) 326 IAC 2-2.2.
(3) 326 IAC 2-2.3.
(4) 326 IAC 2-2.4.
(5) 326 IAC 2-3.
(6) 326 IAC 2-3.2.
(7) 326 IAC 2-3.3.
(8) 326 IAC 2-3.4.

***These documents are incorporated by reference. Copies**

may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2.6-2)*

SECTION 15. 326 IAC 2-3-1, PROPOSED TO BE AMENDED AT 26 IR 2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-1 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The commissioner may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit specified in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.~~

~~(5) When applying for a pollution control project exclusion under subsection (s)(2)(H) for a pollution control project at an existing emissions unit, actual emissions of the unit following the installation of the pollution control project shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the emissions unit resumes regular operation, information demonstrating that the pollution control project and the physical or operational changes to the unit necessary to accommodate the project did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations. This subdivision cannot be used to determine if the pollution control project results in a significant net emissions increase. This subdivision can only be used for an application submitted under the pollution control project exclusion to determine if the project results in a significant net increase in representative actual annual emissions.~~

(4) This definition shall not apply for calculating a significant emissions increase under section 2(c) of this rule or for establishing a PAL under 326 IAC 2-3.4. Instead, subsections (d) and (mm) shall apply for those purposes.

(c) "Allowable emissions" means the emissions rate of a source calculated using the maximum rated capacity of the source unless a source is subject to ~~state or federally~~ enforceable permit limits ~~which~~ **that** restrict the operating rate or hours of operation, or both, and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR **Part** 60, New Source Performance Standards (NSPS)*, and 40 CFR **Part** 61~~*~~, National Emission Standards for Hazardous Air Pollutants (NESHAPS)*.

(2) The emissions limitation imposed by any rule in this title, including those with a future compliance date.

(3) The emissions rate specified as ~~a federally~~ **an** enforceable permit condition, including those with a future compliance date.

(d) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined as follows:

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner may allow the use of a different time period upon a determination that it is more representative of normal source operation. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to

the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required under 326 IAC 2-3, except that the ten (10) year period shall not include any period earlier than November 15, 1990. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions and to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the state has applied the emissions reduction to an attainment demonstration or maintenance plan consistent with the requirements of section 3(b)(14) of this rule.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0) and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision (1), for other existing emissions units in accordance with the procedures contained in subdivision (2), and for a new emissions unit in accordance with the procedures contained in subdivision (3).

~~(d)~~ **(e)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit ~~which~~ **that** are of a permanent nature. ~~Such~~ **These** activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, ~~"begin actual construction"~~ **the term** refers to those on-site activities, other than preparatory activities, ~~which~~ **that** mark the initiation of the change.

~~(e)~~ **(f)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the Clean Air Act which~~ **that** would be emitted from any proposed major stationary source or major modification ~~which~~ **that** the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant ~~which~~ **that** would exceed the emissions allowed by any applicable standard under 40 CFR

Part 60* ~~and~~ **or** 40 CFR **Part** 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means ~~which~~ **that** achieve equivalent results.

~~(f)~~ **(g)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities ~~which~~ **that** belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, that is, those ~~which~~ **that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement, U.S. Government Printing Office*****.

~~(g)~~ **(h)** "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(h)~~ **(i)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(j) "Clean unit" means an emissions unit that meets one (1) of the following criteria:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with the BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-3.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-3.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(i)~~ **(k)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(j)~~ **(l)** "Complete", in reference to an application for a permit, means that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the commissioner from requesting or accepting additional information.

~~(k)~~ **(m)** "Construction" means any physical change or change in the method of operation, including:

(1) fabrication;

(2) erection;

(3) installation;

(4) demolition; or

(5) modification;

of an emissions unit, ~~which~~ **that** would result in a change in actual emissions.

(n) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to complete the following:

(1) Sample emissions on a continuous basis.

(2) If applicable, condition emissions.

(3) Analyze emissions on a continuous basis.

(4) Provide a record of emissions on a continuous basis.

(o) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(p) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2

concentrations; and

(2) record average operational parameter values on a continuous basis.

~~(l)~~ **(q)** "de minimis", in reference to an emissions increase of volatile organic compounds from a modification in a serious or severe ozone nonattainment area, means an increase that does not exceed twenty-five (25) tons per year when the net emissions increases from the proposed modification are aggregated on a pollutant specific basis with all other net emissions increases from the source over a five (5) consecutive calendar year period prior to, and including, the year of the modification.

~~(m)~~ **(r)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(n)~~ **(s)** "Emissions unit" means any part of a stationary source ~~which~~ **that** emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the Clean Air Act.~~ **For purposes of this rule, there are the following two (2) types of emissions units:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1). A replacement unit is an existing emissions unit.

(t) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over the lands.

(u) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(o)~~ **(v)** "Fugitive emissions" means those emissions ~~which~~ **that** could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(p)~~ **(w)** "Incidental emissions reductions" means the reductions in emissions of a pollutant achieved as an indirect result of complying with another rule for another pollutant.

~~(q)~~ **(x)** "Internal offset" means to use net emissions decreases from within the source to compensate for an increase in emissions.

~~(r)~~ **(y)** "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the ~~following:~~ **most stringent emissions limitation that is as follows:**

(1) ~~The most stringent emissions limitation which is~~ Contained in the implementation plan of any state for ~~such~~ **the** class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that ~~such~~ **the** limitations are not achievable.

(2) ~~The most stringent emissions limitation which is~~ Achieved in practice by ~~such~~ **the** class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate ~~permit~~ **allow** a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(s)~~ **(z)** "Major modification" means any physical change **in,** or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase **and a significant net emissions increase of a regulated NSR pollutant from the major stationary source** or, in an area ~~which~~ **that** is classified as either a serious or severe ozone nonattainment area, an increase in VOC emissions that is not de minimis. ~~of any pollutant which is being regulated under the Clean Air Act.~~ The following provisions apply:

(1) Any **significant emissions increase from any emissions units or** net emissions increase **at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan under the Federal Power Act.

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source ~~which:~~ **that the source:**

(i) ~~the source~~ was capable of accommodating before December 21, 1976, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*; or

(ii) ~~the source~~ is approved to use under any permit issued under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*.

(G) Any change in ownership at a stationary source.

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit ~~if the following conditions are met:~~ **meeting the requirements of 326 IAC 2-3.3. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.**

~~(i) Upon review, the department does not determine that:~~

~~(AA) such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(BB) the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the CAA, if any; and~~

~~(CC) the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~During review, the department may request that a source submit an analysis of the air quality impact of the net emissions increase of the pollution control project.~~

~~(ii) If a pollution control project would result in a significant net emissions increase in representative actual annual emissions of a pollutant for which an area is classified as nonattainment, or an emissions increase in VOC that is not de minimis in an area which is classified as either serious or severe ozone nonattainment, then those emissions shall be offset on a one-to-one (1:1) ratio, except that no offsets are required for the following:~~

~~(AA) A pollution control project for an electric utility steam generating unit.~~

~~(BB) A pollution control project that results in a significant net increase in representative actual annual emissions of any criteria pollutant for which the area is classified as nonattainment and current ambient monitoring data demonstrates that the air quality standard for that pollutant in the nonattainment area is not currently being violated.~~

~~(CC) A pollution control project for a NO_x budget unit, as defined in 326 IAC 10-4-2, that is being installed to control NO_x emissions for the purpose of complying with 326 IAC 10-4-2.~~

~~(iii) A pollution control project as described under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8).~~

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

~~(t)~~ **(aa)** "Major stationary source" means the following:

(1) Any stationary source of air pollutants, except for those subject to subdivision (2), ~~which~~ **that** emits or has the potential to emit one hundred (100) tons per year or more of any ~~air~~ **regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~

(2) For ozone nonattainment areas, "major stationary source" includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit volatile organic compounds that would equal or exceed any of the following rates:

Ozone Classification	Rate
Marginal	100 tons per year
Moderate	100 tons per year
Serious	50 tons per year
Severe	25 tons per year

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelter.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivision (1) if the change would by itself

qualify as a major stationary source under subdivision (1).

~~(u)~~ **(bb)** "Necessary preconstruction approvals or permits" means those permits or approvals required under 326 IAC 2-2, 326 IAC 2-5.1, and 326 IAC 2-7.

~~(v)~~ **(cc)** "Net emissions decrease" means the amount by which the sum of the creditable emissions increases and decreases from any source modification project is less than zero (0).

~~(w)~~ **(dd)** "Net emissions increase", with ~~reference to a significant net emissions increase,~~ **respect to any regulated NSR pollutant emitted by a major stationary source,** means the **following:**

(1) The amount by which the sum of the ~~emission increases and decreases at a source~~ **following** exceeds zero (0):

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under section 2(c) and 2(d) of this rule.

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (d), except that subsection (d)(1)(C) and (d)(2)(D) shall not apply.

(2) For the purpose of determining de minimis in an area classified as serious or severe for ozone, the amount by which the sum of the emission increases and decreases from any source modification project exceeds zero (0).

(3) The following emissions increases and decreases are to be considered when determining net emissions increase:

~~(1)~~ **(A)** Any increase in actual emissions from a particular physical change or change in the method of operation.

~~(2)~~ **(B)** Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

~~(A)~~ **(i)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs after January 16, 1979, and between the following:

~~(i)~~ **(AA)** The date five (5) years before construction of the particular change commences.

~~(ii)~~ **(BB)** The date that the increase from the particular change occurs.

~~(B)~~ **(ii)** An increase or decrease in actual emissions is creditable only if the commissioner has not relied on the increase or decrease in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j).

~~(C)~~ **(iv)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(D)~~ **(v)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(AA)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(BB)** it is ~~federally~~ enforceable **as a practical matter** at and after the time that actual construction on the particular change begins;

~~(iii)~~ **(CC)** the commissioner has not relied on it in issuing any permit under regulations approved under ~~40 CFR 51.160 through 40 CFR 51.165*~~ **40 CFR Part 51, Subpart I*** or the state has not relied on it in demonstrating attainment or reasonable further progress; ~~and~~

~~(iv)~~ **(DD)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(EE) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded under 326 IAC 2-3.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-3.3-1(g)(4) for the PCP and 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j) for a clean unit.

~~(E)~~ **(vi)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(vii) Subsection (b)(1) shall not apply for determining creditable increases and decreases or after a particular change or change in method of operation.

~~(x)~~ **(ee)** "New", in reference to a major stationary source, a modified major stationary source, or a major modification, means one ~~which~~ **that** commences construction after the effective date of this rule.

(ff) "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the federal requirements of 40 CFR Part 51.165*, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI*. Any permit issued under the program is a major NSR permit.

~~(y)~~ **(gg)** "Pollution control project" **or "PCP"** means any activity, **set of work practices,** or project, **including pollution prevention,** undertaken at an existing emissions unit ~~for purposes of reducing~~ **that reduces** emissions **of air pollutants** from ~~such~~ **the** unit. ~~Such~~ **The qualifying** activities or projects ~~do not~~ **can** include the replacement **or upgrade** of an existing emissions ~~unit~~ **control technology** with a ~~newer or different~~ **more effective** unit. ~~or the reconstruction of an existing emissions unit. Such activities or projects are limited to any of~~ **Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-3.3-1(c) and 326 IAC 2-3.3-1(f).** The following **projects are presumed to be environmentally beneficial under 326 IAC 2-3.3-1(c)(1):**

(1) ~~The installation of~~ Conventional ~~and~~ **or** advanced flue gas desulfurization ~~and~~ **or** sorbent injection for **control of** sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, ~~and~~ **or** scrubbers for **control of** particulate **matter** or other pollutants.

(3) Flue gas recirculation, low-NO_x burners **or combustors,** selective noncatalytic reduction, ~~and~~ selective catalytic reduction, **low emission combustion for internal combustion engines, and oxidation/absorption catalyst** for **control of** nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, **hydrocarbon combustion** flares, **biofiltration, absorbers** and ~~carbon~~ adsorbers, **and floating roofs for storage vessels** for **control of** volatile organic compounds ~~and~~ **or** hazardous air pollutants. **For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:**

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) ~~An activity or project~~ **Activities or projects undertaken** to accommodate switching, **or partially switching,** to ~~a~~ **an inherently less polluting** fuel, ~~which is less polluting than the fuel in use prior to the activity or project, including, but not~~ **to be** limited to ~~natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions and including any activity that is necessary to accommodate switching to an inherently less polluting~~ **the following** fuel **switches:**

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

~~(6) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Sec. 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA.~~

~~(7) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

~~(8) Pollution prevention projects which the department has determined through a significant source modification to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous air pollutants or that may result in an increase in utilization are not environmentally beneficial.~~

~~(9) Installation of a technology, for the purposes of this subsection, which is not listed in subdivisions (1) through (8) but is determined to be environmentally beneficial by the department through a significant source modification.~~

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the

annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(hh) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain in-process recycling practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(z)~~ **(ii)** "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is ~~federally~~ enforceable **as a practical matter.** Secondary emissions do not count in determining the potential to emit of a stationary source.

(jj) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate on a continuous basis.

(kk) "Prevention of significant deterioration permit" or "PSD permit" means any permit that is issued under 326 IAC 2-2 or under the program in 40 CFR Part 52.21*.

(ll) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(mm) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (d) and that is also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (ii).

~~(aa)~~ **(nn)** "Reasonable further progress" or "RFP" means the annual incremental reductions in emissions of a pollutant ~~which~~ **that** are sufficient in the judgment of the board to provide reasonable progress towards attainment of the applicable ambient air quality standards established by 326 IAC 1-3 by the dates set forth in the Clean Air Act.

~~(bb) "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:~~

~~(1) Atmospheric or pressurized fluidized bed combustion.~~

~~(2) Integrated gasification combined cycle.~~

(3) Magnetohydrodynamics.
(4) Direct and indirect coal-fired turbines.
(5) Integrated gasification fuel cells.
(6) As determined by the U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

Repowering shall also include any oil or gas-fired unit, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.

(cc) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall do the following:

(1) Consider all relevant information, including, but not limited to, the following:
(A) Historical operational data.
(B) The company's own representations.
(C) Filings with Indiana or federal regulatory authorities.
(D) Compliance plans under Title IV of the CAA.

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(oo) "Regulated NSR pollutant" means the following:
(1) Nitrogen oxides or any volatile organic compounds.
(2) Any pollutant for which a national ambient air quality standard has been promulgated.
(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subdivision (1) or (2) provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

(dd) **(pp)** "Secondary emission" means emissions which **that** would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification which **that** causes the secondary emissions. Secondary emissions may include, but are not limited to, **emissions from:**

(1) emissions from the ships or trains coming to or from the new or modified stationary source; and
(2) emissions from an off-site support facility which **that** would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(ee) **(qq)** "Significant", in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, means a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM_{10}	15 tpy
Ozone (marginal and moderate areas)	40 tpy of volatile organic compound (VOC)
Lead	0.6 tpy

(rr) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in subsection (qq) for that pollutant.

(ff) **(ss)** "Source modification project" means all those physical changes or changes in the methods of operation at a source which **that** are necessary to achieve a specific operational change.

(gg) **(tt)** "Stationary source" means any building, structure, facility, or installation, including a stationary internal combustion engine, which **that** emits or may emit any air **a regulated NSR** pollutant. subject to regulation under the Clean Air Act.

(hh) **(uu)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government

Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1106; filed Nov 12, 1993, 4:00 p.m.: 17 IR 725; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1002; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Aug 17, 2001, 3:45 p.m.: 25 IR 6; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; errata filed Dec 12, 2002, 3:30 p.m.: 26 IR 1565)*

SECTION 16. 326 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-2 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) This rule applies to new ~~and modified~~ major stationary sources or major modifications constructed in an area designated, ~~in 326 IAC 1-4~~ **as of the date of submittal of a complete application,** as nonattainment ~~as of the date of submittal of a complete application~~ **in 326 IAC 1-4,** for a pollutant for which the stationary source or modification is major.

(b) This rule applies to modifications of major stationary sources of volatile organic compounds (VOC) in serious and severe ozone nonattainment areas as follows:

(1) A modification of a major stationary source with a de minimis increase in emissions shall be exempt from section 3 of this rule.

(2) A modification having an increase in emissions that is not de minimis to an existing major stationary source that does not have the potential to emit one hundred (100) tons or more of volatile organic compounds (VOC) per year will not be subject to section 3(a) of this rule if the owner or operator of the source elects to internal offset the increase by a ratio of one and three-tenths (1.3) to one (1). If the owner or operator does not make ~~such an~~ **the** election or is unable to, section 3(a) of this rule applies, except that ~~best available control technology~~ BACT shall be substituted for ~~lowest achievable emission rate~~ LAER required by section 3(a)(2) of this rule.

(3) A modification having an increase in emissions that is not de minimis to an existing major stationary source emitting or having the potential to emit one hundred (100) tons of volatile organic compounds (VOC) or more per year will be subject to the requirements of section 3(a) of this rule, except that the owner or operator may elect to internal offset the increase at a ratio of one and three-tenths (1.3) to one (1) as a substitute for ~~lowest achievable emission rate~~ LAER required by section 3(a)(2) of this rule.

(c) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (k) and (l) and consistent with the definition of major modification in section 1(z) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase except for VOC emissions in a severe or serious nonattainment area for ozone. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, in accordance with this subsection, except for VOC emissions in a severe or serious nonattainment area for ozone. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(dd) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is considered to occur.

(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

~~(c)~~ **(d)** At ~~such~~ **the** time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any ~~federally~~ enforceable limitation ~~which~~ **that** was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this

rule applies to the source or modification as though construction had not yet commenced on the source or modification.

~~(d)~~ **(e)** In the case of an area ~~which~~ **that** has been redesignated nonattainment, any source ~~which~~ **that** would not have been required to submit a permit application under 326 IAC 2-2 concerning the prevention of significant deterioration will not be subject to this rule if construction commences within eighteen (18) months of the area's redesignation.

~~(e)~~ **(f)** Major stationary sources or major modifications ~~which~~ **that** would locate in any area designated as attainment or unclassifiable in the state of Indiana and would exceed the following significant impact levels at any locality, for any pollutant ~~which~~ **that** is designated as nonattainment, must meet the requirements specified in section 3(a)(1) through 3(a)(3) of this rule. All values are expressed in micrograms per cubic meter ($\mu g/m^3$):

Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
Sulfur dioxide	1	5	X	25	X
Total suspended particulates	1	5	X	X	X
PM_{10}	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

~~(f)~~ **(g)** This rule does not apply to a source or modification, other than a source of volatile organic compounds in a serious or severe ozone nonattainment area or a source of PM_{10} in a serious PM_{10} area, that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal driers).
(2) Kraft pulp mills.
(3) Portland cement plants.
(4) Primary zinc smelters.
(5) Iron and steel mill plants.
(6) Primary aluminum ore reduction plants.
(7) Primary copper smelters.
(8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day.
(9) Hydrofluoric, sulfuric, and nitric acid plants.
(10) Petroleum refineries.
(11) Lime plants.
(12) Phosphate rock processing plants.
(13) Coke oven batteries.
(14) Sulfur recovery plants.
(15) Carbon black plants (furnace process).
(16) Primary lead smelters.
(17) Fuel conversion plants.
(18) Sintering plants.
(19) Secondary metal production plants.
(20) Chemical process plants.
(21) Fossil-fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(22) Petroleum storage and transfer unit with a storage capacity exceeding three hundred thousand (300,000) barrels.
(23) Taconite ore processing plants.
(24) Glass fiber processing plants.
(25) Charcoal production plants.
(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

~~(g)~~ **(h)** For purposes of this rule, secondary emissions from a source need not be considered in determining whether the source would qualify as a major source. ~~However,~~ If a source is subject to this rule on the basis of the direct emissions from the source, the applicable conditions must also be met for secondary emissions. ~~However, such~~ **The** secondary emissions may be exempt from the requirements specified in section 3(a)(2) through 3(a)(3) of this rule.

~~(h)~~ **(i)** Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

~~(i)~~ **(j)** The installation, operation, cessation, or removal of temporary clean coal technology demonstration projects funded under the Department of Energy–Clean Coal Technology Appropriations may be exempt from the requirements of section 3 of this rule. To qualify for this exemption, the project must be at an existing facility, operate for no more than five (5) years, and comply with all other applicable rules for the area.

(k) For any major stationary source operating under a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 326 IAC 2-3.4.

(l) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-3.3.

(m) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(mm)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(mm)(2)(A)(3) of this rule and an explanation for why the amount was excluded; and

(iv) any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1), exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) The emissions calculated under the actual to projected actual test stated in subsection (c)(3).

(D) Any other information that the owner or operator wishes to include in the report.

(6) The owner or operator of the source shall make the information required to be documented and maintained under subdivisions (1) through (5) available for review upon a request for inspection by the department. The general public may request this information from the department under 326 IAC 17.1.

(Air Pollution Control Board; 326 IAC 2-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2404; filed Nov 12, 1993, 4:00 p.m.: 17 IR 728; filed Aug 17, 2001, 3:45 p.m.: 25 IR 11)

SECTION 17. 326 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-3 Applicable requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. (a) Prior to the issuance of a construction permit to a source subject to this rule, the applicant shall comply with the following requirements:

(1) The proposed major new source or major modification shall demonstrate that the source will meet all applicable requirements of this title, any applicable new source performance standard in 40 CFR **Part** 60*, or any national emission standard for hazardous air pollutants in 40 CFR **Part** 61*. If the commissioner determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct will be denied.

(2) The applicant will apply emission limitation devices or techniques to the proposed construction or modification such that the ~~lowest achievable emission rate~~ LAER for the applicable pollutant will be achieved.

(3) The applicant shall either demonstrate that all existing major sources owned or operated by the applicant in the state of Indiana are in compliance with all applicable emission limitations and standards contained in the Clean Air Act and in this title or demonstrate that they are in compliance with a federally enforceable compliance schedule requiring compliance as expeditiously as practicable.

(4) The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for ~~such~~ **the** proposed source ~~which~~ **that** demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) Emissions resulting from the proposed construction or modification shall be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The emission offset shall be such that there will be reasonable further progress toward attainment of the applicable ambient air quality standards as follows:

(A) Greater than one-for-one unless otherwise specified.

(B) For ozone nonattainment areas, the following table shall determine the minimum offset ratio requirements for major stationary sources of volatile organic compounds:

Ozone Classification	Minimum Offset Requirements
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1

(6) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the CAA shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

~~(6)~~ **(7)** The applicant shall obtain the necessary preconstruction approvals and shall meet all the permit requirements specified in 326 IAC 2-5.1 or 326 IAC 2-7.

(8) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with an applicable provision of the state implementation plan and any other requirements under local, state, or federal law.

(b) The following provisions shall apply to all emission offset evaluations:

(1) Emission offsets shall be determined on a tons per year and, whenever possible, a pounds per hour basis when all facilities requiring offset involved in the emission offset calculations are operating at their maximum potential or allowed production rate. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets shall be calculated using the allowed or actual annual operating hours, whichever is less.

(2) The baseline for determining credit for emission offsets will be the emission limitations or actual emissions, whichever is lower, in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowable for existing control that goes beyond that required by source-specific emission limitations contained in this title.

(3) In cases where the applicable rule under this title does not contain an emission limitation for a source or source category, the emission offset baseline involving ~~such~~ **the** sources shall be the actual emissions determined at their maximum expected or allowable production rate.

(4) In cases where emission ~~limits~~ **limitations** for existing sources allow greater emissions than the ~~uncontrolled emission rate~~ **potential to emit** of the source, emission offset credit shall only be allowed for emissions controlled below the ~~uncontrolled emission rate.~~ **potential to emit.**

(5) A source may receive offset credit from emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels ~~provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be federally enforceable. Emission offsets may be credited for a source shutdown or curtailment provided that the applicant can establish that such shutdown or curtailment occurred less than one (1) year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment.~~ **if the reductions are permanent, quantifiable, and federally enforceable and if the area has an attainment plan approved by U.S. EPA. Offset credits from emission reductions must be in compliance with the following:**

(A) The shutdown or curtailment is creditable only if it occurred on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For the purposes of this clause, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory if the inventory explicitly includes, as current existing emissions, the emissions from such previously shutdown or curtailed sources.

(B) The reductions may be credited in the absence of an approved attainment demonstration only if:

(i) the shutdown or curtailment occurred on or after the date the new source permit application is filed; or

(ii) the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions in clause (A) are observed.

(6) Emission offset credit involving an existing fuel combustion source will be based on the allowable emissions under other rules of this title for the type of fuel being burned at the time the new source application is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is acceptable, provided the permit is conditioned to require the use of a specific alternative control measure ~~which~~ **that** would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The commissioner will grant emission offset credit for fuel switching only after ensuring that adequate supplies of the new fuel are available at least for the next ten (10) years.

(7) In the case of volatile organic compound emissions, no emission offset credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds defined as nonphotochemically reactive hydrocarbons in 326 IAC 1-2-48.

(8) No emission reduction may be approved to offset emissions ~~which~~ **that** cannot be federally enforced. Offsetting emissions shall be considered federally enforceable if the reduction is included as a condition in the applicable permit as specified in 326 IAC 2-5.1 or 326 IAC 2-7 if issued under a federally-approved air permit program.

(9) Emission reductions required under any other rule adopted by the air pollution control board shall not be creditable as emission reductions and therefore cannot be used for emission offsets.

(10) Incidental emission reductions that are not otherwise required by any other rule adopted by the air pollution control board shall be creditable as emission reductions for emission offsets if ~~such~~ **the** emission reductions meet all of the other requirements for offsets.

(11) A source may offset by alternative or innovative means emission increases from rocket engine or motor firing and cleaning related to ~~such~~ **the** firing at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test ~~such~~ **the** engines on November 15, 1990.

(B) The source demonstrates to the satisfaction of the department that:

(i) it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels; ~~that~~

(ii) all available offsets are being used; and ~~that~~

(iii) sufficient offsets are not available to the source.

(C) The source has obtained a written finding from:

(i) the Department of Defense;

(ii) the Department of Transportation;

(iii) the National Aeronautics and Space Administration; or

(iv) other appropriate federal agency;

that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by the department, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(12) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.

(13) Decreases in actual emissions occurring at a clean unit cannot be used as offsets except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j). Decreases in actual emissions occurring at a PCP cannot be used as offsets except as provided in 326 IAC 2-3.3-1(g)(4).

(14) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in:

(A) issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I*; or

(B) a demonstration for attainment or reasonable further progress.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2406; filed Nov 12, 1993, 4:00 p.m.: 17 IR 730; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1005; filed Aug 17, 2001, 3:45 p.m.: 25 IR 12)*

SECTION 18. 326 IAC 2-3.2 IS ADDED TO READ AS FOLLOWS:

Rule 3.2. Clean Unit Designations in Nonattainment Areas

326 IAC 2-3.2-1 Clean unit designations for emission units subject to LAER

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to this section. This section applies to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this section.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with

LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

(5) For emissions units that meet the requirements of clauses (A) and (B), the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subsections (c) through (h). For these emissions units, all requirements for the LAER determination under subdivisions (2) and (3) shall also apply to the BACT permit terms and conditions. In addition, the requirements of subsection (g)(1)(B) do not apply to emissions units that qualify for clean unit status under this subdivision. The emissions units must be in compliance with the following:

(A) The emissions unit must have received a PSD permit within the last ten (10) years, and the permit must require the emissions unit to comply with BACT.

(B) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the date this rule is effective in the state implementation plan.

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit designation expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, and that meets both of the following requirements:

(A) The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day LAER under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with

the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with the LAER determination and any physical or operational characteristic that formed the basis for the LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit, including the following:

(A) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4).

(B) The clean unit may not emit above a level that has been offset.

(2) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-3.2-1)*

326 IAC 2-3.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to the provisions in this section. This section applies to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to LAER as determined by the department in accordance with this section. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this section.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the

emissions unit's control technology is comparable to LAER for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as LAER, as defined in 326 IAC 2-3-1(y), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional LAER determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The approval must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7-12:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) Effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the effective date. When the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the expiration date. When the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(2) The owner or operator may not make a physical change in or change in the method of operation of the

clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER as specified in subsection (h)(4).

(3) The clean unit may not emit above a level that has been offset.

(4) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(5) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit's designation expires or is lost under section 1(b)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-3.2-2)*

SECTION 19. 326 IAC 2-3.3 IS ADDED TO READ AS FOLLOWS:

Rule 3.3. Pollution Control Project Exclusion Procedural Requirements in Nonattainment Areas

326 IAC 2-3.3-1 Pollution control project exclusion procedural requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department, if the project is listed in 326 IAC 2-3-1(gg), or, if the project is not listed in 326 IAC 2-3-1(gg), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-3-1(gg) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-3-2(c) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is

consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-3-1(gg), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-3-1(gg), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase or be used for generating offsets unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(h) If the PCP would result in a significant net emissions increase in any regulated NSR pollutant for which the area is classified as nonattainment, except in an area that is classified as either serious or severe nonattainment for ozone, the significant net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. In addition, the significant net emission increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(i) If the PCP would result in an increase in VOC emissions that is not de minimis in an area that is classified as either serious or severe nonattainment for ozone, the VOC net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The VOC emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. In addition, the VOC net emissions increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public. *(Air Pollution Control Board; 326 IAC 2-3.3-1)*

SECTION 20. 326 IAC 2-3.4 IS ADDED TO READ AS FOLLOWS:

Rule 3.4. Actuals Plantwide Applicability Limitations in Nonattainment Areas

326 IAC 2-3.4-1 Applicability

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The department may approve the use of an actuals plantwide applicability limitation (PAL) for any existing major stationary source, except as provided in subsection (b), if the PAL meets the requirements in this rule. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL, that level meets the requirements in this rule, and that complies with the PAL permit:

(1) is not a major modification for the PAL pollutant;

(2) does not have to be approved through 326 IAC 2-3; and

(3) is not subject to 326 IAC 2-3-2(d).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-3.4-1)*

326 IAC 2-3.4-2 Definitions

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-3-1 or in the CAA.

(b) "Actuals PAL", for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions" means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(3) An emissions unit's potential to emit shall be determined using the definition in 326 IAC 2-3-1.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit:

(1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL under section 11 of this rule is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification in 326 IAC 2-3-1(z) and net emissions increase in 326 IAC 2-3-1(dd), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the regulated NSR pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in 326 IAC 2-3-1 or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in 326 IAC 2-3-1(qq) or in the CAA, whichever is lower.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3.4-2)*

326 IAC 2-3.4-3 Permit application requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-3)

326 IAC 2-3.4-4 Establishing PALs; general requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, on a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-3.4-4)*

326 IAC 2-3.4-5 Public participation requirements for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be:

(1) established;
(2) renewed;
(3) increased;
(4) terminated; or
(5) revoked;

through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-3.4-5)*

326 IAC 2-3.4-6 Establishing a 10 year actuals PAL level
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at

the source plus an amount equal to the least of the following levels:

(1) The applicable significant level in 326 IAC 2-3-1(qq) for the PAL pollutant.

(2) The de minimis level in 326 IAC 2-3-1(q) in case of the PAL for VOC emissions for sources located in severe or serious nonattainment areas.

(3) The level specified under CAA.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units, except modifications to existing units, on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-3.4-6)*

326 IAC 2-3.4-7 Contents of the PAL permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-3.4-7)

326 IAC 2-3.4-8 PAL effective period and reopening of the PAL permit

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:

(A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source under the state implementation plan.

(C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-8)

326 IAC 2-3.4-9 Expiration of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(1), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if the change meets the definition of major modification in 326 IAC 2-3-1.

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-3-2(d) but were eliminated by the PAL in accordance with the provisions in section 1(c)(3) of this rule.
(Air Pollution Control Board; 326 IAC 2-3.4-9)

326 IAC 2-3.4-10 Renewal of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of PAL expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in this subsection. However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:

(A) air quality needs;

(B) advances in control technology;

(C) anticipated economic growth in the area;

(D) desire to reward or encourage the source's voluntary emissions reductions; or

(E) other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. *(Air Pollution Control Board; 326 IAC 2-3.4-10)*

326 IAC 2-3.4-11 Increasing a PAL during the PAL effective period

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 11. (a) The department may increase a PAL emission limitation during the PAL effective period only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR process, even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-11)*

326 IAC 2-3.4-12 Monitoring requirements for PALs

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.

(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:

(A) that meets subdivision (1); and

(B) if it is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.

(3) CPMS or PEMS.

(4) Emission factors.

(c) An owner or operator using mass balance calculations

to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or

(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

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326 IAC 2-3.4-13 Record keeping requirements

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

***This document is incorporated by reference. Copies may**

be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-3.4-13)*

326 IAC 2-3.4-14 Reporting and notification requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports to the department of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-3.4-14)*

326 IAC 2-3.4-15 Termination and revocation of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring

systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-3.4-15)*

SECTION 21. 326 IAC 2-5.1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-5.1-4 Transition procedures
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-4-9; IC 13-17

Sec. 4. (a) The commissioner shall include an approval to operate and operating conditions in an initial construction permit. The level of approval shall be as follows:

(1) A source ~~may request~~ **shall obtain** approval to operate under a state operating permit under 326 IAC 2-6.1 if ~~either of the following~~ applies:

~~(A)~~ the permit does not include terms and conditions that limit the potential to emit of the source to below thresholds that would require a Part 70 permit.

~~(B) The source is subject to the Part 70 requirements under 326 IAC 2-7 and will submit a Part 70 permit application within twelve (12) months of the date the source is approved to operate.~~

(2) A source will obtain approval to operate as a FESOP under 326 IAC 2-8 if the permit includes terms and conditions that limit the potential to emit of the source to below the thresholds that require the source to obtain a Part 70 permit and is issued in accordance with 326 IAC 2-8-13.

(3) A source ~~may~~ **shall** obtain approval to operate as a Part 70 source under 326 IAC 2-7 if:

(A) the source is constructing under 326 IAC 2-2 or 326 IAC 2-3; or

(B) the potential to emit exceeds the Part 70 major source thresholds as defined in 326 IAC 2-7-1(22).

The permit **must include the permit** content **in accordance with 326 IAC 2-7-5** and compliance requirements ~~conform to 326 IAC 2-7-5 and~~ **in accordance with** 326 IAC 2-7-6, and the permit ~~is~~ **must be** issued in accordance with 326 IAC 2-7-17.

(b) If all terms and conditions of 326 IAC 2-1.1-6 were satisfied in the processing of the construction permit, then the emission limitations may be included in the subsequent operating permit without repeating the public notice requirements in 326 IAC 2-1.1-6. *(Air Pollution Control Board; 326 IAC 2-5.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1011)*

SECTION 22. 326 IAC 2-7-10.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-10.5 Part 70 permits; source modifications
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to:

(1) construct new emission units;

(2) modify existing emission units; or

(3) otherwise modify the source as described in this section; shall submit a request for a modification approval in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a modification approval or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) Any person proposing to make a modification described in subsection (d) or (f) shall submit an application to the commissioner concerning the modification as follows:

(1) If only preconstruction approval is requested, the application shall contain the following information:

(A) The company name and address.

(B) The following descriptive information:

(i) A description of the nature and location of the proposed construction or modification.

(ii) The design capacity and typical operating schedule of the proposed construction or modification.

(iii) A description of the source and the emissions unit or units comprising the source.

(iv) A description of any proposed emission control equipment, including design specifications.

(C) A schedule for proposed construction or modification of the source.

(D) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the Clean Air Act (CAA), the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:

(i) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(ii) Estimates of offset credits, as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.

(iii) Any other information, including, but not limited to, the air quality impact, determined by the commissioner to be necessary to reasonably demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(E) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. ~~Such~~ **The** signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(2) If the source requests that the preconstruction approval and operating permit revision be combined, the application shall contain the information in subdivision (1) and the following information consistent with section 4(c) of this rule:

(A) An identification of the applicable requirements to which the source will be subject as a result of the modification, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(B) A description of the Part 70 permit terms and conditions that will apply to the modification and that are consistent with sections 5 and 6 of this rule.

(C) A schedule of compliance, if applicable.

(D) A statement describing what the compliance status of the modification will be after construction has been completed consistent with section 4(c)(10) of this rule.

(E) A certification consistent with section 4(f) of this rule.

(d) The following modifications shall be processed in accordance with subsection (e):

(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source if the addition or relocation would require a change to any permit terms or conditions.

~~(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1(13) that do not increase the potential to emit PM_{10} greater than or equal to fifteen (15) tons per year or any other regulated pollutant greater than the thresholds under subdivision (4), but require a significant change in the method or methods to demonstrate or monitor compliance.~~

~~(4)~~ **(3)** Modifications that would have a potential to emit within any of the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO_2).

(ii) Nitrogen oxides (NO_x).

(iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).

(C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

~~(5)~~ **(4)** Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

(A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.

(B) Limiting annual hours of operation of the process or

business.

(C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

~~(6)~~ **(5)** A modification that is subject to a reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR **Part** 63, Subpart B, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (b), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

~~(7)~~ **(6)** A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

~~(8)~~ **(7)** A modification of an existing source that has a potential to emit greater than the thresholds under subdivision ~~(4)~~ **(3)** if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:

(A) results in the replacement or repair of an entire process;

(B) qualifies as a reconstruction of an entire process;

(C) may result in an increase of actual emissions; or

(D) would result in a net emissions increase greater than the significant levels in 326 IAC 2-2 or 326 IAC 2-3.

~~(9)~~ **(8)** A modification that has a potential to emit greater than the thresholds under subdivision ~~(4)~~ **(3)** that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.

~~(10)~~ **(9)** For a source in Lake or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO_x, any modification that would result in an increase of either emissions ~~as follows:~~ **greater than or equal to the following:**

(A) ~~Greater than or equal to~~ Fifteen (15) pounds per day of VOCs.

(B) ~~Greater than or equal to~~ Twenty-five (25) pounds per day of NO_x.

(e) Modification approval procedures for modifications described under subsection (d) are as follows:

(1) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has approved the modification request.

(2) Within forty-five (45) calendar days from receipt of an application for a modification described under subsection (d), the commissioner shall do one (1) of the following:

(A) Approve the modification request.

(B) Deny the modification request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards would allow for an increase in emissions greater than the thresholds in subsection (f) or would not provide for compliance monitoring consistent with this rule and should be processed under subsection (g).

(3) The source may begin construction as follows:

(A) If the source has a final Part 70 permit and only requests preconstruction approval or if the source does not have a final Part 70 permit, the source may begin construction upon approval by the commissioner. Notwithstanding IC 13-15-5, the commissioner's approval shall become effective immediately. Operation of the modification shall be as follows:

(i) For a source that has a final Part 70 permit, operation of the modification may commence in accordance with section 12 of this rule.

(ii) For a source without a final Part 70 permit, operation may begin after construction is completed.

(B) If the source requests that the preconstruction approval and operating permit revision be combined, the source may begin construction upon approval and operation may begin in accordance with section 11 of this rule.

(f) The following modifications shall be processed in accordance with subsection (g):

(1) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(2) A modification that is subject to 326 IAC 8-1-6.

(3) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(4) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of any of the following pollutants:

(A) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(B) Sulfur dioxide (SO_2).

(C) Nitrogen oxides (NO_x).

(D) Volatile organic compounds (VOC).
(E) Hydrogen sulfide (H_2S).
(F) Total reduced sulfur (TRS).
(G) Reduced sulfur compounds.
(H) Fluorides.

(5) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(6) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(7) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(8) The addition, replacement, or use of a pollution control project, as defined in ~~326 IAC 2-1.1-1(13)~~ **326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg),** that ~~is exempt under 326 IAC 2-2-1(o)(2)(H). The requirement to process such modifications in accordance with subsection (g) does not apply to pollution control projects that the department approved as an environmentally beneficial pollution control project through a permit issued prior to July 1, 2000.~~ **must obtain an exclusion under 326 IAC 2-2.3 or 326 IAC 2-3.3 and is not included in the presumptive list in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).**

(9) Modifications involving a pollution prevention project, as defined in 326 IAC 2-1.1-1(13), that increase the potential to emit any regulated pollutant greater than the applicable thresholds under subdivisions (3) through (7). The requirement to process ~~such~~ **the** modifications in accordance with subsection (g) does not apply to pollution prevention projects that the department approved as an environmentally beneficial pollution prevention project through a permit issued prior to July 1, 2000.

(10) The designation of a clean unit that is using control technology comparable to BACT or LAER as defined in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2.

(g) The following shall apply to the modifications described in subsection (f):

(1) Any person proposing to make a modification described in subsection (f) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has issued a modification approval.

(3) The commissioner shall approve or deny the modification as follows:

(A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (f) except subsection (f)(1) **and (f)(10).**

(B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (f)(1) **or (f)(10).**

(4) A modification approval under this subsection may be issued only if all of the following conditions have been met:

(A) The commissioner has received a complete application for a modification.

(B) The commissioner has complied with the requirements for public notice as follows:

(i) For modifications for which a source is only requesting preconstruction approval, the commissioner has complied with the requirements under 326 IAC 2-1.1-6.

(ii) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the commissioner has complied with the requirements under section 17 of this rule.

(C) The conditions of the modification approval provide for compliance with all applicable requirements and ~~the requirements of~~ this rule.

(D) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the U.S. EPA has received a copy of the proposed modification approval and any notices required and has not objected to the issuance of the modification approval within the time period specified in section 18 of this rule.

(5) The commissioner shall provide a technical support document that sets forth the legal and factual basis for draft modification approval conditions, including references to the applicable statutory and regulatory provisions. The commissioner shall send this technical support document to the U.S. EPA, the applicant, and any other person who requests it.

(h) The following shall apply to a modification approval described in subsection (f) for a source that has not received a final Part 70 permit:

(1) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(A) The affidavit shall include the following:

(i) Name and title of the authorized individual.

(ii) Company name.

(iii) Subject to item (iv), an affirmation that the emissions units described in the modification approval were constructed in conformance with the request for modification approval and that ~~such~~ **the** emissions units will comply with the modification approval.

(iv) Identification of any changes to emissions units not included in the request for modification approval, but which should have been included under subsection (a).

(v) Signature of the authorized individual.

(B) The affidavit shall be notarized.

(C) A source shall submit the affidavit to the commissioner either after construction of all the emission units described in the modification approval or after each phase of con-

struction of the emission units described in the modification approval, as applicable, has been completed.

(2) A source may not operate any emissions units described in the modification approval prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(A) A source may operate the emissions units covered by the affirmation in the affidavit of construction upon submission of the affidavit of construction.

(B) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(C) The validation letter shall authorize the operation of all or part of each emissions unit covered by the affirmation in the affidavit of construction.

(D) Subject to clause (E), the validation letter shall include any amendments to the modification approval if ~~such~~ **the** amendment is requested by the source and if ~~such~~ **the** amendment does not constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(E) A validation letter shall not approve the operation of any emissions unit if an amendment to the modification approval requested by the source would constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(i) Each modification approval issued under this rule shall provide that construction must commence within eighteen (18) months of the issuance of the modification approval.

(j) All modification approval proceedings under this section shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft modification approval as established in 326 IAC 2-1.1-6 or section 17 of this rule.

(k) The commissioner shall provide for review by the U.S. EPA and affected states of each:

(1) modification application;

(2) draft modification approval;

(3) proposed modification approval; and

(4) final modification approval;

in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

(l) A modification approval issued in accordance with this section shall be incorporated into the source's Part 70 permit or permit application as follows:

(1) For a source that has a final Part 70 permit and requested that the preconstruction approval and permit revision be combined, the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

(2) For a source that has a final Part 70 permit and requested only a preconstruction approval, the source may begin operation in accordance with section 12 of this rule.

(3) For a source that has a complete Part 70 permit application on file, but does not have a final Part 70 permit and requested only preconstruction approval, the modification approval shall be deemed incorporated in the Part 70 permit application and will be included in the Part 70 permit when issued.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-7-10.5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065)*

SECTION 23. 326 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-11 Administrative permit amendments

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 11. (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the Part 70 permit or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a Part 70 permit is necessary, provided that a written agreement containing a specific date for transfer of a Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Incorporates into a Part 70 permit the requirements from preconstruction permits issued under section 10.5 of this rule that have satisfied the requirements of sections 17 and 18 of this rule as appropriate.

(6) Incorporates into a Part 70 permit a general permit issued under section 13 of this rule.

(7) Revises descriptive information where the revision will not trigger a new applicable requirement or violate a permit term.

(8) Incorporates:

(A) an exempt unit as described in 326 IAC 2-1.1-3;

(B) an insignificant activity as defined in 326 IAC 2-7-1(21); or

(C) a PAL small emissions unit as defined in 326 IAC 2-2.4-2(m) or 326 IAC 2-3.4-2(l);

that does not otherwise constitute a modification for purposes of section 10.5 or 12 of this rule.

(b) Administrative Part 70 permit amendments, for purposes of the acid rain portion of a Part 70 permit, shall be governed by regulations promulgated under Title IV of the CAA.

(c) An administrative Part 70 permit amendment may be made by the commissioner consistent with the following:

(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on ~~such~~ **the** request and may incorporate ~~such~~ **the** changes without providing prior notice to the public or affected states provided that it designates ~~any such~~ **these** Part 70 permit revisions as having been made under this subsection.

(2) The commissioner shall submit a copy of a revised Part 70 permit to the U.S. EPA.

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(Air Pollution Control Board; 326 IAC 2-7-11; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1043; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 24. 326 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-12 Permit modification

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 12. (a) A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under section 11 of this rule. A permit modification, for purposes of the acid rain portion of the permit, shall be governed by regulations promulgated under Title IV of the CAA.

(b) Minor permit modification procedures shall be as follows:

(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

(A) Do not violate any applicable requirement.

(B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the Part 70 permit.

(C) Do not require or change a:

(i) case-by-case determination of an emission ~~limit~~ **limitation** or other standard;

(ii) source specific determination for temporary sources of ambient impacts; or

(iii) visibility or increment analysis.

(D) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. ~~Such~~ **The** terms and conditions include the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.

(ii) An alternative emissions limit approved under regulations promulgated under Section 112(i)(5) of the CAA.

(E) Are not modifications under any provision of Title I of the CAA.

(F) The addition of a clean unit that was automatically designated as described in 326 IAC 2-2.2-1 or 326 IAC 2-3.2-1.

(G) The addition of a listed PCP as defined in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).

~~(F)~~ **(H)** Are not required by the Part 70 program to be processed as a significant modification.

(2) Notwithstanding subdivision (1) and subsection (c)(1), minor Part 70 permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable Part 70 permits, emissions trading, and other similar approaches to the extent that ~~such~~ **the** minor Part 70 permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated or approved by the U.S. EPA.

(3) An application requesting the use of minor Part 70 permit modification procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit reflecting the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of minor Part 70 permit modification procedures and a request that ~~such~~ **the** procedures be used.

(D) Completed forms for the commissioner to use to notify the U.S. EPA and affected states.

(E) A copy of any previous approval issued by the commissioner under this article.

(4) The public notice provisions of section 17 of this rule shall apply to minor modifications.

(5) Within five (5) working days of receipt of a complete Part 70 permit modification application, the commissioner shall notify the U.S. EPA and affected states of the requested Part 70 permit modification. The commissioner promptly shall send any notice required to the U.S. EPA.

(6) The commissioner may not issue a final Part 70 permit modification until after the U.S. EPA's forty-five (45) day

review period or until U.S. EPA has notified the commissioner that U.S. EPA will not object to issuance of the Part 70 permit modification, whichever is first, although the commissioner may approve the Part 70 permit modification prior to that time. Within ninety (90) days of the commissioner's receipt of an application under the minor Part 70 permit modification procedures or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later, the commissioner shall do any of the following:

(A) Issue the Part 70 permit modification as proposed.

(B) Deny the Part 70 permit modification application.

(C) Determine that the requested modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant modification procedures.

(D) Revise the draft Part 70 permit modification and transmit to the U.S. EPA the new proposed Part 70 permit modification as required by section 18(b) of this rule.

(7) The source may make the change proposed in its minor Part 70 permit modification application immediately after it files ~~such~~ **the** application. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision (6)(A) through (6)(C), the source must comply with both the applicable requirements governing the change and the proposed Part 70 permit terms and conditions. During this time period, the source need not comply with the existing Part 70 permit terms and conditions it seeks to modify. If the source fails to comply with its proposed Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions it seeks to modify may be enforced against it.

(8) The Part 70 permit shield under section 15 of this rule is not applicable to minor Part 70 permit modifications until after the commissioner has issued the modification.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor Part 70 permit modification processing:

(1) Group processing of modifications may be used only for those Part 70 permit modifications that meet the following requirements:

(A) The modifications meet the criteria for minor Part 70 permit modification procedures under subsection (b).

(B) The modifications are exempt from preconstruction or permit revision approval under 326 IAC 2-1.1-3.

(2) An application requesting the use of group processing procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit ~~which~~ **that** reflects the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that ~~such~~ **the** procedures be used.

(D) A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(E) Certification, consistent with section 4(f) of this rule, that the source has notified the U.S. EPA of the proposed modification. ~~Such~~ **The** notification need only contain a brief description of the requested modification.

(F) Completed forms for the commissioner to use to notify the U.S. EPA and affected states as required under section 18 of this rule.

(3) The notice provisions of section 17 of this rule shall apply to modifications eligible for group processing.

(4) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is earlier, the commissioner promptly shall notify the U.S. EPA, under section 18(a) of this rule, and affected states, under section 17(4) of this rule, of the requested Part 70 permit modifications. The commissioner shall send any notice required under section 18(b) of this rule to the U.S. EPA.

(5) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later.

(6) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(7) The Part 70 permit shield under section 15 of this rule is not applicable to modifications eligible for group processing until after the commissioner has issued the modifications.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting Part 70 permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring Part 70 permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. **The:**

(A) addition;

(B) renewal;

(C) termination;

(D) revocation; and

(E) revision;

of PAL provisions in accordance with 326 IAC 2-2.4 or 326 IAC 2-3.4 shall be considered significant. Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would

render existing Part 70 permit compliance terms and conditions irrelevant.

(2) Significant Part 70 permit modifications shall meet all requirements of this rule, including those for application, public participation, review by affected states, and review by the U.S. EPA, and availability of the permit shield as they apply to Part 70 permit issuance and Part 70 permit renewal. The commissioner shall complete review of the majority of significant Part 70 permit modifications within nine (9) months after receipt of a complete application.

(Air Pollution Control Board; 326 IAC 2-7-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1044; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 25. 326 IAC 2-2.5 IS REPEALED.

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 June 2, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed new rules and amendments to 326 IAC 2.

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 new rules and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 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) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #03-161

DIGEST

Adds 410 IAC 1-7 to establish procedures subsequent to the testing of pregnant women for HIV and standards regarding the provision of information concerning HIV to women who are pregnant, before delivery, at delivery, and after delivery. Effective 30 days after filing with the secretary of state.

410 IAC 1-7

SECTION 1. 410 IAC 1-7 IS ADDED TO READ AS FOLLOWS:

Rule 7. HIV Counseling and Testing of Pregnant Women

410 IAC 1-7-1 Applicability
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 1. The definitions in this rule apply throughout this rule. *(Indiana State Department of Health; 410 IAC 1-7-1)*

410 IAC 1-7-2 "AIDS" defined
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 2. "AIDS" means acquired immune deficiency syndrome. *(Indiana State Department of Health; 410 IAC 1-7-2)*

410 IAC 1-7-3 "Department" defined
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 3. "Department" means the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 1-7-3)*

410 IAC 1-7-4 "HIV" defined
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 4. "HIV" means human immunodeficiency virus. *(Indiana State Department of Health; 410 IAC 1-7-4)*

410 IAC 1-7-5 "HIV medical services program" defined
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 5. "HIV medical services program" means those

medical and pharmaceutical services available to eligible HIV positive persons provided by the department through the support of state and federal funding. *(Indiana State Department of Health; 410 IAC 1-7-5)*

410 IAC 1-7-6 "Provider" defined
Authority: IC 16-41-6-11
Affected: IC 16-41-6; IC 16-18-2-295

Sec. 6. "Provider" has the meaning set forth in IC 16-18-2-295. *(Indiana State Department of Health; 410 IAC 1-7-6)*

410 IAC 1-7-7 Provider's responsibilities to pregnant women who have been tested for HIV
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 7. (a) A provider, or his or her designee, must deliver the following:
(1) The test results for HIV infected and HIV uninfected patients in a direct, straightforward, and confidential manner.
(2) The results at the earliest possible encounter after testing.
(3) The results face-to-face for HIV infected patients.

(b) If the test results positive, the treating provider, or his or her designee, must do the following:
(1) Explain the side effects of any treatment for HIV in a direct, straightforward, confidential manner.
(2) Discuss pros and cons of initiation of drug therapy.
(3) Discuss treatment recommendations based on the U.S. Public Health Service Task Force recommendation for use of antiretroviral drugs in pregnant HIV-1-infected women for maternal health and interventions to reduce perinatal HIV-1 transmission in the United States, MMWR 51, RR-18.
(Indiana State Department of Health; 410 IAC 1-7-7)

410 IAC 1-7-8 Pregnant woman on a waiting list for HIV medical services
Authority: IC 16-41-6-11
Affected: IC 16-41-6-5; IC 16-41-6-6

Sec. 8. (a) A pregnant woman must have a complete application for the HIV medical services program on file with the department.

(b) A pregnant woman who meets all the qualifications to participate in the HIV medical services program and tests positive under IC 16-41-6-5 or IC 16-41-6-6 shall be given first priority on a waiting list for the program if a waiting list exists for the HIV medical services program.

(c) A pregnant woman who tests positive under IC 16-41-6-5 or IC 16-41-6-6 may appeal her placement on a waiting list for HIV medical services by filing a written appeal with the department.

(d) The appeal shall be filed within fifteen (15) days of receipt of the notification of placement on a waiting list.

(e) The appeal will be reviewed by the state health commissioner, or his or her designee, who will also make the determination in the case within seventy-two (72) hours of receipt of all requested medical information and other pertinent documentation, as detailed by section 9 of this rule, necessary to determine the applicant's eligibility for services.

(f) The appeal must include name, date of birth, and mailing address. *(Indiana State Department of Health; 410 IAC 1-7-8)*

410 IAC 1-7-9 Appeal of placement on a waiting list
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 9. Applicants who appeal their placement on a waiting list for the HIV medical services program shall provide a signed physician's statement confirming the following:
(1) The pregnancy.
(2) A HIV treatment regimen.
(Indiana State Department of Health; 410 IAC 1-7-9)

410 IAC 1-7-10 Information to the pregnant woman
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 10. (a) A provider, or his or her designee, shall provide the following to pregnant women at the appropriate times, which could include before delivery, at delivery, and after delivery:
(1) An explanation of the nature of AIDS and HIV that:
(A) is consistent with MMWR41, RR-17, and MMWR 43, RR12; and
(B) includes the following elements:
(i) HIV results in a defect in cell-mediated immune response causing increased susceptibility to opportunistic infections and certain rare cancers.
(ii) HIV is a virus that is transmitted from one (1) person to another through blood, semen, vaginal secretions, or breast milk.
(iii) HIV is a virus that, without treatment, aggressively destroys the immune system.
(iv) AIDS is a severe immunological disorder that can result from HIV.
(2) Information that it is unlawful to discriminate against persons living with HIV in areas of employment, housing, and provision of health care services. If the women believe that they have been discriminated against, they may contact the Indiana civil rights commission.
(3) Information that women who have tested positive for

HIV or who have been diagnosed with AIDS are not to engage in high-risk activity (including sexual or needle-sharing contact, which has been demonstrated to transmit a dangerous communicable disease) without warning past, present, or future sexual or needle-sharing partners before engaging in that high-risk activity. Carriers who know of their status as a carrier of HIV or AIDS have a duty to warn or cause to be warned by a third party a person at risk, including a spouse of the last ten (10) years, of the following:

(A) The carrier's disease status.

(B) The need to seek health care, such as counseling and testing.

(4) Information about risk behaviors for HIV transmission that is consistent with MMWR50, RR19. It must include the following:

(A) High-risk activities refer to sexual or needle-sharing contact, which has been demonstrated to transmit HIV.

(B) HIV is known to be transmitted through blood, semen, vaginal secretions, and breast milk.

(5) Information about the risk of transmission through breastfeeding that is consistent with MMWR50, RR19, including that breastfeeding by an HIV positive woman carries a risk for transmission of the virus from mother to infant.

(b) The department will continue to be a resource for educational information and referral sources. *(Indiana State Department of Health; 410 IAC 1-7-10)*

410 IAC 1-7-11 Notification to the pregnant woman
Authority: IC 16-41-6-11
Affected: IC 16-41-6-4

Sec. 11. If the mother of a newborn infant has not had a test performed for HIV or if the mother has refused a test for the newborn infant to detect HIV or the antibody or antigen to HIV and a physician believes that testing the newborn infant is medically necessary, the physician overseeing the care of the newborn infant may order a confidential test for the newborn infant in order to detect HIV or the antibody or antigen to HIV under IC 16-41-6-4. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant. The mother shall be notified of the test and the result of the test. *(Indiana State Department of Health; 410 IAC 1-7-11)*

410 IAC 1-7-12 Obtaining consent
Authority: IC 16-41-6-11
Affected: IC 16-41-6-2; IC 16-41-6-7

Sec. 12. (a) The provider shall follow the procedures for obtaining consent of the woman as detailed in IC 16-41-6-2.

(b) The provider shall inform the woman of her options under IC 16-41-6-7. *(Indiana State Department of Health; 410 IAC 1-7-12)*

410 IAC 1-7-13 Post-test counseling procedures
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 13. Post-test counseling will be conducted in a direct, straightforward, confidential manner by the provider or his or her designee. *(Indiana State Department of Health; 410 IAC 1-7-13)*

410 IAC 1-7-14 Referral procedures
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 14. The provider shall assess the patient's level of need and provide referrals to the appropriate services, which may include HIV-specific case management services. *(Indiana State Department of Health; 410 IAC 1-7-14)*

410 IAC 1-7-15 Importance of immediate HIV medical care
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 15. Providers, or their designees, shall counsel the patient regarding the importance of immediate entry into medical care for the duration of the pregnancy. *(Indiana State Department of Health; 410 IAC 1-7-15)*

410 IAC 1-7-16 Explanation of decreasing transmission of HIV during pregnancy
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 16. (a) Providers shall counsel that HIV can be transmitted to the fetus during pregnancy, and treatment can significantly decrease that transmission.

(b) Providers shall counsel, prior to delivery, that giving birth by cesarean section may decrease transmission of HIV to the child, especially when done in combination with medications, if the HIV test results are positive.

(c) Counseling on this matter shall be conducted in a direct, straightforward, confidential manner by the provider or his or her designee. *(Indiana State Department of Health; 410 IAC 1-7-16)*

410 IAC 1-7-17 Incorporation by reference
Authority: IC 16-41-6-11
Affected: IC 16-41-6

Sec. 17. (a) The following documents are hereby incorporated by reference:

(1) Centers for Disease Control and Prevention publication: MMWR 2001 Revised Guidelines for HIV Counseling, Testing, and Referral and Revised Recommendations for HIV Screening of Pregnant Women – United States, 2001, November 9, 2001, Volume 50, No. RR 19.

(2) Centers for Disease Control and Prevention publication: MMWR 2002 HIV Testing Among Pregnant Women-United States and Canada, 1998-2001, November 15, 2002, Volume 51RR45.
(3) Centers for Disease Control and Prevention publication: MMWR 2002 U.S. Public Health Service Task Force Recommendations for Use of Antiretroviral Drugs in Pregnant HIV-1-Infected Women for Maternal Health and Interventions to Reduce Perinatal HIV-1 Transmission in the United States, November 22, 2002, Volume 51/RR18.
(4) Centers for Disease Control and Prevention publication: MMWR 2003 Advancing HIV Prevention: New Strategies for a Changing Epidemic-United States, 2003, April 18, 2003, Volume No. 15.

(b) All incorporated material is available for public review at the department.

(c) Copies of MMWR publications may be obtained from Centers for Disease Control and Prevention, MMWR Series, Mail Stop C-08, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. *(Indiana State Department of Health; 410 IAC 1-7-17)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 23, 2004 at 2:00 p.m., at the Indiana State Department of Health Building, 2 North Meridian Street, Yoho Board Room, 3rd Floor, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on a proposed new rule to establish procedures subsequent to the testing of pregnant women for HIV and standards regarding the provision of information concerning HIV to women who are pregnant, before delivery, at delivery, and after delivery. Copies of these rules are now on file at the Community and Family Health Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #03-275

DIGEST

Amends 410 IAC 16.2-3.1 and 410 IAC 16.2-5, regulating comprehensive and residential care health facilities, by adding a definition of cognitive and to require additional in-service educational requirements of facility personnel, designation of and qualifications for a director of an Alzheimer's and dementia special care unit, facilities to provide a resident a copy of the Alzheimer's and dementia care unit disclosure form and to clarify rules under resident behavior and facility practices, health services, and resident's rights. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-1.1-11.5	**410 IAC 16.2-3.1-29**
410 IAC 16.2-3.1-3	**410 IAC 16.2-5-1.2**
410 IAC 16.2-3.1-4	**410 IAC 16.2-5-1.3**
410 IAC 16.2-3.1-13	**410 IAC 16.2-5-1.4**
410 IAC 16.2-3.1-14	**410 IAC 16.2-5-2**
410 IAC 16.2-3.1-26	**410 IAC 16.2-5-4**

SECTION 1. 410 IAC 16.2-1.1-11.5 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-11.5 "Cognitive" defined
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 11.5. "Cognitive" means a person's ability:
(1) for short and long term memory or recall;
(2) to make decisions regarding the tasks of daily living; and
(3) to make self understood.
(Indiana State Department of Health; 410 IAC 16.2-1.1-11.5)

SECTION 2. 410 IAC 16.2-3.1-3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-3 Residents' rights
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 3. (a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:
(1) ~~The resident has the right~~ To exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
(2) ~~The resident has the right~~ To be free of the following:
(A) Interference.
(B) Coercion.
(C) Discrimination.
(D) Reprisal from or threat of reprisal from the facility in exercising his or her rights.

(b) The resident has the right to the following:
(1) Examination of the results of the most recent annual survey of the facility conducted by federal or state surveyors, ~~and~~ any plan of correction in effect with respect to the

facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.
(2) Receipt of information from agencies acting as client advocates and the opportunity to contact these agencies.

(c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the residents are exercised by the person appointed under state law to act on the resident's behalf.

(d) In the case of an incompetent resident who has not been adjudicated incompetent by a state court, any legal representative may exercise the resident's rights to the extent provided by state law.

(e) The resident has the right to:
(1) refuse to perform services for the facility;
(2) perform services for the facility, if he or she chooses, when:
(A) the facility has documented the need or desire for work in the care plan;
(B) the plan specifies the nature of the services performed and whether the services are voluntary or paid;
(C) compensation for paid services is at or above the prevailing rates; and
(D) the resident agrees to the work arrangement described in the care plan.

(f) The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(g) A resident has the right to organize and participate in resident groups in the facility.

(h) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(i) The facility must provide a resident or family group, if one exists, with private space.

(j) Staff or visitors may attend meetings only at the group's invitation.

(k) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

(l) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families and report back at a later time in accordance with facility policy.

(m) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(n) The resident has the right to the following:
(1) Choose a personal attending physician ~~or~~ **and** other ~~provider~~ **providers** of services. If a physician or other provider of services, **or both,** of the resident's choosing fails to fulfill a given federal or state requirement to assure the provisions of appropriate and adequate care and treatment, the facility will have the right, after consulting with the resident, the physician, ~~or~~ **and the** other provider of services, to seek alternate physician participation or services from another provider.
(2) Be fully informed in advance about care and treatment, and of any changes in that care and treatment, that may affect the resident's well-being.
(3) Participate in planning care and treatment or changes in care and treatment unless adjudged incompetent or otherwise found to be incapacitated under state law.

(o) The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(p) Personal privacy includes the following:
(1) Accommodations.
(2) Medical treatment.
(3) Written and telephone communications.
(4) Personal care.
(5) Visits.
(6) Meetings of family and resident groups.
This does not require the facility to provide a private room for each resident.

(q) Except as provided in subsection (r), the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

(r) The resident's rights to refuse release of personal and clinical records does not apply when:
(1) the resident is transferred to another health care institution; or
(2) record release is required by law.

(s) The resident has the right to privacy in written communications, including the right to:
(1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident;
(2) have access to stationery, postage, and writing implements at the resident's own expense; and
(3) receive any literature or statements of services that accompany mailings from Medicaid that the facility receives on behalf of the resident.

(t) The resident has the right to be cared for in a manner and in an environment that maintains or enhances each resident's

dignity and respect in full recognition of his or her individuality.

(u) The resident has the right to the following:
(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.
(2) Interact with members of the community both inside and outside the facility.
(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(v) A resident has the right to the following:
(1) Reside and receive services in the facility with reasonable accommodations of the individual's needs and preferences, except when the health or safety of the individual or other residents would be endangered.
(2) Receive notice before the resident's room or roommate in the facility is changed.

(w) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(x) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), (b)(1), (e), (n), (o), (p), (q), (r), (t), or (w) is a deficiency;
(2) subsection (b)(2), (c), (d), (f), (g), (l), (m), (s), (u), or (v) is a noncompliance; and
(3) subsection (h), (i), (j), or (k) is a nonconformance.
(Indiana State Department of Health; 410 IAC 16.2-3.1-3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1528, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 3. 410 IAC 16.2-3.1-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-4 Notice of rights and services
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 16-36-1-3; IC 16-36-1-7; IC 16-36-4-7; IC 16-36-4-13; IC 30-5-7-4

Sec. 4. (a) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing. A copy of the resident's rights must be available in a publicly accessible area. The copy must be at least 12-point type.

(b) The resident has the right to the following:
(1) Immediate access to the current active clinical record.
(2) Upon an oral or written request, to access all other records pertaining to himself or herself within twenty-four (24) hours.
(3) After receipt of his or her records for inspection, to purchase at a cost, not to exceed the community standard, photocopies of the records or any portions of them upon request and two (2) working days' advance notice to the facility.

(c) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition.

(d) The resident has the right to refuse treatment. Any refusals of treatment must be accompanied by counseling on the medical consequences of such refusal.

(e) The resident has the right to refuse participation in experimental research. All experimental research must be conducted in compliance with state, federal, and local laws and professional standards.

(f) The facility must do the following:
(1) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of the following:
(A) The items and services that are included in nursing facility services under the state plan and for which the resident may not be charged.
(B) Those other items and services that the facility offers and for which the resident may be charged and the amount of the charges.
(2) Inform each resident when changes are made to the items and services specified in this section.
(3) Inform each resident before, or at the time of admission, in writing and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.
(4) Provide written information to each resident concerning the following:
(A) The resident's rights under IC 16-36-1-3 and IC 16-36-1-7 to make decisions concerning their care, including the right to:
(i) accept or refuse medical or surgical treatment; and ~~the right to~~
(ii) formulate advance directives.
(B) The facility's written policies regarding the implementation of such rights, including a clear and precise statement of limitation if the facility or its agent cannot implement an advance directive on the basis of conscience ~~pursuant to~~ **under** IC 16-36-4-13.
(5) Document in the resident's clinical record whether the resident has executed an advance directive and ~~to~~ include a copy of such advance directive in the clinical record.
(6) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.
(7) Ensure compliance with the requirements of state law

regarding advance directives.
(8) Provide for education for staff on issues concerning advance directives.
(9) Provide for community education regarding advance directives either directly or in concert with other facilities or health care providers or other organizations.
(10) Distribute to each resident upon admission the state developed written description of the law concerning advance directives.
(11) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, provide the resident at the time of admission to the facility with a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(g) A facility is not required to provide care that conflicts with an advance directive ~~pursuant to~~ **under** IC 16-36-4-7.

(h) If a facility objects to implementation of an advance directive on the basis of conscience, they must comply with IC 30-5-7-4.

(i) Residents have the right to be informed by the facility, in writing, at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(j) The facility must furnish on admission a written description of legal rights, including the following:
(1) A description of the manner of protecting personal funds under this section.
(2) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
(3) The most recently known addresses and telephone numbers, including, but not limited to, the following:
(A) The department.
(B) The office of the secretary of family and social services.
(C) The ombudsman designated by the division of disability, aging, and rehabilitative services.
(D) The area agency on aging.
(E) The local mental health center.
(F) The protection and advocacy services commission.
(G) Adult protective services.
These shall be displayed in a prominent place in the facility.

(k) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(l) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information, about how to:
(1) apply for and use Medicare and Medicaid benefits; and ~~how to~~
(2) receive refunds for previous payments covered by such benefits.

(m) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (h) is an offense;
(2) subsection (d), (e), or (g) is a deficiency;
(3) subsection (a), (b), (c), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(8), (f)(10), (i), (j)(1), (k), or (l) is a noncompliance; and
(4) subsection (f)(6), (f)(7), (f)(9), (j)(2), or (j)(3) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1529, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; errata filed Jun 4, 1997, 1:47 p.m.: 20 IR 2789; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 4. 410 IAC 16.2-3.1-13 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-13 Administration and management
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 13. (a) The licensee is responsible for compliance with all applicable laws and rules. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including:
(1) initial orientation of all employees;
(2) a continuing inservice education and training program for all employees; and
(3) provision of supervision for all employees.

(c) If a facility offers services in addition to those provided to its long term care residents, the administrator is responsible for assuring that such additional services do not adversely affect the care provided to its residents.

(d) The licensee shall notify the department within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility but shall not function as a departmental supervisor, for example, director of nursing or food service

supervisor, during the same hours. The responsibilities of the administrator shall include, but are not limited to, the following:

(1) Immediately informing the division by telephone, followed by written notice within twenty-four (24) hours, of unusual occurrences that directly threaten the welfare, safety, or health of the resident or residents, including, but not limited to, any:

(A) epidemic outbreaks;

(B) poisonings;

(C) fires; or

(D) major accidents.

If the department cannot be reached, such as on holidays or weekends, a call shall be made to the emergency telephone number ((317) 383-6144) of the division.

(2) Promptly arranging for medical, dental, podiatry, or nursing care or other health care services as prescribed by the attending physician.

(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring that the facility maintains, on the premises, time schedules and an accurate record of actual time worked that indicates the employees' full names and the dates and hours worked during the past twelve (12) months. This information shall be furnished to the division staff upon request.

(5) Maintaining a copy of this article and making it available to all personnel and the residents.

(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) Each facility, except a facility that cares for children or an intermediate care facility for the mentally retarded, shall encourage all employees serving residents or the public to wear name and title identification.

(i) Each facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:

(1) the range of services offered; ~~resident~~

(2) residents' rights;

(3) personnel administration; and

(4) facility operations.

(j) The licensee shall approve the policy manual, and subsequent revisions, in writing. The policy manual shall be reviewed and dated at least annually. The resident care policies shall be developed by a group of professional personnel and approved by the medical director.

(k) The policies shall be maintained in a **manual or** manuals accessible to employees and made available upon request to:

(1) residents;

(2) the department;

(3) the sponsor or surrogate of a resident; and

(4) the public.

Management/ownership confidential directives are not required to be included in the policy manual; however, the policy manual must include all of the facility's operational policies.

(l) To assure continuity of care of residents in cases of emergency, the facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, missing residents, and including situations that may require emergency relocation of residents. Facilities caring for children shall have a written plan outlining the staff procedures, including isolation and evacuation, in case of an outbreak of childhood diseases.

(m) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under a written agreement. Such agreements pertaining to services furnished by outside resources must specify, in writing, that the facility assumes responsibility for the following:

(1) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility.

(2) The timeliness of the services.

(3) Orientation to pertinent facility policies and residents to whom they are responsible.

(n) Each facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(o) Each facility shall submit an annual statistical report to the department.

(p) The facility must have in effect a written transfer agreement with one (1) or more hospitals that reasonably assures the following:

(1) Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician.

(2) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(3) Specification of the responsibilities assumed by both the discharging and receiving institutions for prompt notification of the impending transfer of the resident for:

(A) agreement by the receiving institution to admit the resident;

(B) arranging appropriate transportation and care of the

resident during transfer; and

(C) the transfer of personal effects, particularly money and valuables, and of information related to such items.

(4) Specification of the restrictions with respect to the types of services available ~~and/or~~ **or** the types of residents or health conditions that will not be accepted by the hospital or the facility, **or both,** including any other criteria relating to the transfer of residents.

The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(q) A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(r) The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(s) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(t) The governing body shall appoint the administrator who is:

(1) licensed under IC 25-19-1; and

(2) responsible for the management of the facility.

(u) The facility must designate a physician to serve as medical director.

(v) The medical director shall be responsible for the following:

(1) Acting as a liaison between the administrator and the attending physicians to encourage physicians to write orders promptly and to make resident visits in a timely manner.

(2) Reviewing, evaluating, and implementing resident care policies and procedures and to guide the director of nursing services in matters related to resident care policies and services.

(3) Reviewing incidents and accidents that occur on the premises to identify hazards to health and safety.

(4) Reviewing employees preemployment physicals and health reports and monitoring employees health status.

(5) The coordination of medical care in the facility.

(w) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health care professional. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(x) The director of the Alzheimer's and dementia care unit shall do the following:

(1) Oversee the operation of the unit.

(2) Ensure that personnel assigned to the unit receive required inservice training.

(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

~~(w)~~ **(y)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), (c), (g), (r), (t), (u), ~~or~~ (v), **or (x)** is a deficiency;

(2) subsection (b), (d), (e), (f), (i), (l), (p), (q), ~~or~~ (s), **or (w)** is a noncompliance; and

(3) subsection (h), (j), (k), (m), (n), or (o) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-13; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1535, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 5. 410 IAC 16.2-3.1-14 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-14 Personnel

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 14. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Specific inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) A facility must not use any individual working in the facility as a nurse aide for more than four (4) months on a full-time, part-time, temporary, per diem, or other basis unless that individual:

(1) is competent to provide nursing and nursing-related

services; and

(2) has completed a training and competency evaluation program approved by the division or a competency evaluation program approved by the division.

(c) Each nurse aide who is hired to work in a facility shall have successfully completed a nurse aide training program approved by the division or shall enroll in the first available approved training program scheduled to commence within sixty (60) days of the date of the nurse aide's employment. The program may be established by the facility or by an organization or institution. The training program shall consist of at least the following:

(1) Thirty (30) hours of classroom instruction within one hundred twenty (120) days of employment. At least sixteen (16) of those hours shall be in the following areas prior to any direct contact with a resident:

(A) Communication and interpersonal skills.

(B) Infection control.

(C) Safety/emergency procedures, including the Heimlich maneuver.

(D) Promoting resident's independence.

(E) Respecting residents' rights.

(2) The remainder of the thirty (30) hours of instruction shall include the following:

(A) Basic nursing skills as follows:

(i) Taking and recording vital signs.

(ii) Measuring and recording height and weight.

(iii) Caring for residents' environment.

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(v) Caring for residents when death is imminent.

(B) Personal care skills, including, but not limited to, the following:

(i) Bathing.

(ii) Grooming, including mouth care.

(iii) Dressing.

(iv) Toileting.

(v) Assisting with eating and hydration.

(vi) Proper feeding techniques.

(vii) Skin care.

(viii) Transfers, positioning, and turning.

(C) Mental health and social service needs as follows:

(i) Modifying aides' behavior in response to residents' behavior.

(ii) Awareness of developmental tasks associated with the aging process.

(iii) How to respond to residents' behavior.

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity.

(v) Using the resident's family as a source of emotional support.

(D) Care of cognitively impaired residents as follows:

(i) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(ii) Communicating with cognitively impaired residents.

(iii) Understanding the behavior of cognitively impaired residents.

(iv) Appropriate responses to the behavior of cognitively impaired residents.

(v) Methods of reducing the effects of cognitive impairments.

(E) Basic restorative services as follows:

(i) Training the resident in self-care according to the resident's abilities.

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing.

(iii) Maintenance of range of motion.

(iv) Proper turning and positioning in bed and chair.

(v) Bowel and bladder training.

(vi) Care and use of prosthetic and orthotic devices.

(F) Residents' rights as follows:

(i) Providing privacy and maintenance of confidentiality.

(ii) Promoting residents' right to make personal choices to accommodate their needs.

(iii) Giving assistance in resolving grievances and disputes.

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities.

(v) Maintaining care and security of residents' personal possessions.

(vi) Promoting residents' right to be free from abuse, mistreatment, and neglect, and the need to report any instances of such treatment to appropriate facility staff.

(vii) Avoiding the need for restraints in accordance with current professional standards.

(3) Seventy-five (75) hours of supervised clinical experience, at least sixteen (16) hours of which must be in directly supervised practical training. As used in this subdivision, "directly supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under direct supervision of a registered nurse or a licensed practical nurse. These hours shall consist of normal employment as a nurse aide under the supervision of a licensed nurse.

(4) Training that ensures the following:

(A) Students do not perform any services for which they have not trained and been found proficient by the instructor.

(B) Students who are providing services to residents are under the general supervision of a licensed nurse.

(d) A facility must arrange for individuals used as nurse aides, as of the effective date of this rule to participate in a competency evaluation program approved by the division, and preparation necessary for the individual to complete the program.

(e) Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless **the individual:**

(1) ~~the individual~~ is a full-time employee in a training and competency evaluation program approved by the division; or

(2) ~~the individual~~ can prove that he or she has recently successfully completed a training and competency evaluation program approved by the division and has not yet been included in the registry.

Facilities must follow up to ensure that such individual actually becomes registered.

(f) A facility must check with all state nurse aide registries it has reason to believe contain information on an individual before using that individual as a nurse aide.

(g) If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of twenty-four (24) consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(h) The facility must complete a performance review of every nurse aide at least once every twelve (12) months and must provide regular inservice education based on the outcome of these reviews. The inservice training must be as follows:

(1) Sufficient to ensure the continuing competence of nurse aides but must be no less than twelve (12) hours per year.

(2) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff.

(3) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(i) The facility must ensure that nurse aides and qualified medication aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments and described in the care plan.

(j) Medication shall be administered by licensed nursing personnel or qualified medication aides. If medication aides handle or administer drugs or perform treatments requiring medications, the facility shall ensure that the persons have been properly qualified in medication administration by a state-approved course. Injectable medications shall be given only by licensed personnel.

(k) There shall be an organized ongoing inservice education and training program planned in advance for all personnel. This training shall include, but not be limited to, the following:

(1) ~~Resident~~ **Residents'** rights.

(2) Prevention and control of infection.

(3) Fire prevention.

(4) Safety and accident prevention.

(5) Needs of specialized populations served.

(6) Care of cognitively impaired residents.

(l) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel as follows. For nursing personnel, this shall include at least twelve (12) hours of ~~in-services~~ **inservice** per calendar year and six (6) hours of inservice per calendar year for nonnursing personnel.

(m) Inservice programs for items required under subsection (k) shall contain a means to assess learning by participants.

(n) The administrator may approve attendance at outside workshops and continuing education programs related to that individual's responsibilities in the facility. Documented attendance at these workshops and programs meets the requirements for inservice training.

(o) Inservice records shall be maintained and shall indicate the following:

(1) The time, date, and location.

(2) Name of the instructor.

(3) The title of the instructor.

(4) The name of the participants.

(5) The program content of inservice.

The employee will acknowledge attendance by written signature.

(p) Initial orientation of all staff must be conducted and documented and shall include the following:

(1) Instructions on the needs of the specialized **population or** populations served in the facility, for example:

(A) aged;

(B) developmentally disabled;

(C) mentally ill; ~~or~~

(D) children; **or**

(E) care of cognitively impaired;

residents.

(2) A review of residents' rights and other pertinent portions of the facility's policy manual.

(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures and universal precautions.

(4) A detailed review of the appropriate job description, including a demonstration of equipment and procedures required of the specific position to which the employee will be assigned.

(5) Review of ethical considerations and confidentiality in resident care and records.

(6) For direct care staff, instruction in the particular needs of each resident to whom the employee will be providing care.

(q) Each facility shall maintain current and accurate personnel

records for all employees. The personnel records for all employees shall include the following:

(1) Name and address of employee.

(2) Social Security number.

(3) Date of beginning employment.

(4) Past employment, experience, and education if applicable.

(5) Professional licensure, certification, or registration number if applicable.

(6) Position in the facility and job description.

(7) Documentation of orientation to the facility and to the specific job skills.

(8) Signed ~~acknowledgment~~ **acknowledgement** of orientation to ~~resident~~ **residents'** rights.

(9) Performance evaluations in accordance with the facility's policy.

(10) Date and reason for separation.

(r) The employee's personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(s) Professional staff must be licensed, certified, or registered in accordance with applicable state laws or rules.

(t) A physical examination shall be required for each employee of a facility within one (1) month prior to employment. The examination shall include a tuberculin skin test, using the Mantoux method (5 TU PPD), administered by persons having documentation of training from a department-approved course of instruction in intradermal tuberculin skin testing, reading, and recording unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The tuberculin skin test must be read prior to the employee starting work. The facility must assure the following:

(1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.

(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.

(3) The facility shall maintain a health record of each employee that includes:

(A) a report of the preemployment physical examination; and

(B) reports of all employment-related health examinations.

(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(u) In addition to the required inservice hours in subsection (l), staff who have regular contact with residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months of initial employment, or within thirty (30) days for personnel assigned to the Alzheimer's and dementia special care unit, and three (3) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

~~(u)~~ **(v)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection (c), (e), (f), (g), (i), (j), or (s) is a deficiency;

(2) subsection (a), (b), (d), (h), (k), (l), (m), (n), (o), (p), ~~or~~ (t), **or (u)** is a noncompliance; and

(3) subsection (q) or (r) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-14; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1537, eff Apr 1, 1997; errata, 20 IR 1738; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3024; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 6. 410 IAC 16.2-3.1-26 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-26 Resident behavior and facility practices

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 26. (a) Less restrictive measures must have been tried by the interdisciplinary team and shown to be ineffective before restraints are applied.

(b) Restraint or seclusion shall be employed only by order of a physician, and the type of restraint or seclusion shall be specified in the order.

(c) Per required need (PRN) restraint or seclusion shall only be employed upon the authorization of a licensed nurse. All contacts with a nurse or physician not on the premises for authorization to administer PRN restraints shall be documented in the nursing notes indicating the time and date of the contact.

(d) The facility policy manual shall designate who is authorized to apply restraints. The facility shall have written procedures in which the persons authorized to apply restraints have been properly trained.

(e) In emergencies when immediate physical restraint or seclusion is needed for the protection of the resident or others, restraint or seclusion may be authorized by a licensed nurse for a period not to exceed twelve (12) hours. A physician's order to

continue restraint or seclusion must be obtained in order to continue the restraint beyond the twelve (12) hour period.

(f) A record of physical restraint and seclusion of a resident shall be kept in accordance with this rule.

(g) Each resident under restraint and seclusion shall be visited by a member of the nursing staff at least once every hour and more frequently if the resident's condition requires.

(h) Each physically restrained or secluded individual shall be temporarily released from restraint or seclusion at least every two (2) hours or more often if necessary except when the resident is asleep. When the resident in restraint is temporarily released, the resident shall be assisted to ambulate, toileted, or changed in position as the resident's physical condition permits.

(i) A resident shall not be placed alone in a room with a full, solid locked door.

(j) Key lock restraints shall not be used or available in the facility. ~~The acceptable forms of physical restraint include, but are not limited to, the following:~~
~~(1) Cloth vests.~~
~~(2) Soft cloth ties.~~
~~(3) Soft cloth mittens.~~
~~(4) Seat belts.~~
~~(5) Trays with spring release devices.~~

(k) Chemical restraint shall be authorized in writing by a physician.

(l) An order for chemical restraints shall specify the dosage and the interval of and reasons for the use of chemical restraint.

(m) Administration of chemical restraints shall be documented in accordance with this rule.

(n) Restraints and seclusion shall be used in such a way as not to cause physical injury to the resident.

(o) Restraints of any type or seclusion shall only be used for the protection and safety of residents or others as required by medical symptoms that warrant the restraint, or safety issues that warrant the seclusion, and shall not be used as a punishment. Restraints and seclusion shall be used in such a way as to minimize discomfort to the resident.

(p) Restraints or seclusion shall be applied in a manner that permits rapid removal in case of fire or other emergency.

(q) The resident's legal representative shall be notified of the need for restraint or seclusion at the time of the physician's initial order or within twenty-four (24) hours after emergency restraint or seclusion is applied. Such notification shall be documented in the nursing notes. After the physician's order for restraint or seclusion is initially written, the legal representative may request in writing not to be notified.

(r) The least restrictive restraint must be used. The continued use of the restraint or seclusion must be reviewed at each care plan conference. Least or lesser restrictive measures must be considered at each meeting.

(s) The use of restraints must be reviewed by the interdisciplinary team within one (1) month after the application of the restraint, and every thirty (30) days for the first ninety (90) days of the restraints, and at least quarterly thereafter.

(t) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (j) or (n) is an offense;
(2) subsection (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (o), (p), or (r) is a deficiency; and
(3) subsection (f), (m), (q), or (s) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-26; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1550, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 7. 410 IAC 16.2-3.1-29 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-29 Preadmission evaluation

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 29. (a) The facility is responsible for the evaluation of prospective residents to ensure that only those residents whose medical, **cognitive,** and psychosocial needs can be met by the facility or through community resources are admitted to the facility.

(b) An evaluation of the prospective residents shall be made prior to admission. The evaluation shall include personal or telephone interviews with:
(1) the resident;
(2) the resident's physician; or
(3) the representative of the facility from which the resident is being transferred if applicable.

A brief record of the evaluation shall be retained by the facility for those residents who are admitted to the facility and shall be used, as applicable, in planning for the care of the resident.

(c) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a) is an offense; and
(2) subsection (b) is a deficiency.

(Indiana State Department of Health; 410 IAC 16.2-3.1-29; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1551, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 8. 410 IAC 16.2-5-1.2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.2 Residents' rights

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 4-21.5; IC 12-10-5.5; IC 12-10-15-9; IC 16-28-5-1

Sec. 1.2. (a) Residents have the right to have their rights recognized by the licensee. The licensee shall establish written policies regarding residents' rights and responsibilities in accordance with this article and shall be responsible, through the administrator, for their implementation. These policies and any adopted additions or changes thereto shall be made available to the resident, staff, legal representative, and general public. Each resident shall be advised of residents' rights prior to admission and shall signify, in writing, upon admission and thereafter if the residents' rights are updated or changed. There shall be documentation that each resident is in receipt of the described residents' rights and responsibilities. A copy of the residents' rights must be available in a publicly accessible area. The copy must be in at least 12-point type and a language the resident understands.

(b) Residents have the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Residents have the right to exercise their rights as a resident of the facility and as a citizen or resident of the United States.

(c) Residents have the right to exercise any or all of the enumerated rights without:
(1) restraint;
(2) interference;
(3) coercion;
(4) discrimination; or
(5) threat of reprisal;
by the facility. These rights shall not be abrogated or changed in any instance, except that, when the resident has been adjudicated incompetent, the rights devolve to the resident's legal representative. When a resident is found by his or her physician to be medically incapable of understanding or exercising his or her rights, the rights may be exercised by the resident's legal representative.

(d) Residents have the right to be treated with consideration, respect, and recognition of their dignity and individuality.

(e) Residents have the right to be provided, at the time of admission to the facility, the following:
(1) A copy of his or her admission agreement.
(2) A written notice of the facility's basic daily or monthly rates.
(3) A written statement of all facility services (including those offered on an as needed basis).
(4) Information on related charges, admission, readmission, and discharge policies of the facility.
(5) The facility's policy on voluntary termination of the admission agreement by the resident, including the disposition of any entrance fees or deposits paid on admission. The admission agreement shall include at least those items provided for in IC 12-10-15-9.
(6) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(f) Residents have the right to be informed of any facility policy regarding overnight guests. This policy shall be clearly stated in the admission agreement.

(g) Residents have the right to be informed by the facility, in writing at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(h) The facility must furnish on admission the following:
(1) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
(2) The most recently known addresses and telephone numbers of the following:
(A) The department.
(B) The office of the secretary of family and social services.
(C) The ombudsman designated by the division of disability, aging, and rehabilitation services.
(D) The area agency on aging.
(E) The local mental health center.
(F) Adult protective services.
The addresses and telephone numbers in this subdivision shall be posted in an area accessible to residents and updated as appropriate.

(i) The facility will distribute to each resident upon admission the state developed written description of law concerning advance directives.

(j) Residents have the right to the following:
(1) Participate in the development of his or her service plan and in any updates of that service plan.
(2) Choose the attending physician and other providers of services, including arranging for on-site health care services unless contrary to facility policy. Any limitation on the resident's right to choose the attending physician ~~and/or~~ **or** service provider, **or both,** shall be clearly stated in the admission agreement. Other providers of services, within the content of this subsection, may include home health care agencies, hospice care services, or hired individuals.
(3) Have a pet of his or her choice, so long as the pet does not pose a health or safety risk to residents, staff, or visitors or a risk to property unless prohibited by facility policy. Any limitation on the resident's right to have a pet of his or her choice shall be clearly stated in the admission agreement.
(4) Refuse any treatment or service, including medication.
(5) Be informed of the medical consequences of a refusal under subdivision (4) and have such data recorded in his or

her clinical record if treatment or medication is administered by the facility.

(6) Be afforded confidentiality of treatment.

(7) Participate or refuse to participate in experimental research. There must be written ~~acknowledgment~~ **acknowledgement** of informed consent prior to participation in research activities.

(k) The facility must immediately consult the resident's physician and the resident's legal representative when the facility has noticed:

(1) a significant decline in the resident's physical, mental, or psychosocial status; or

(2) a need to alter treatment significantly, that is, a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment.

(l) If the facility participates in the Medicaid waiver ~~and/or~~ **or** residential care assistance programs, **or both,** the facility must provide to residents written information about how to apply for Medicaid benefits and room and board assistance.

(m) The facility must promptly notify the resident and, if known, the resident's legal representative when there is a change in roommate assignment.

(n) Residents may, throughout the period of their stay, voice grievances to the facility staff or to an outside representative of their choice, recommend changes in policy and procedure, and receive reasonable responses to their requests without fear of reprisal or interference.

(o) Residents have the right to form and participate in a resident council, and families of residents have the right to form a family council, to discuss alleged grievances, facility operation, ~~resident~~ **residents'** rights, or other problems and to participate in the resolution of these matters as follows:

(1) Participation is voluntary.

(2) During resident or family council meetings, privacy shall be afforded to the extent practicable unless a member of the staff is invited by the resident council to be present.

(3) The licensee shall provide space within the facility for meetings and assistance to residents or families who desire to attend meetings.

(4) The facility shall develop and implement policies for investigating and responding to complaints when made known and grievances made by:

(A) an individual resident;

(B) a resident council ~~and/or~~ **or** family council, **or both;**

(C) a family member;

(D) family groups; or

(E) other individuals.

(p) Residents have the right to the examination of the results of the most recent annual survey of the facility conducted by the state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys.

(q) Residents have the right to appropriate housing assignments as follows:

(1) When both husband and wife are residents in the facility, they have the right to live as a family in a suitable room or quarters and may occupy a double bed unless contraindicated for medical reasons by the attending physician.

(2) Written facility policy and procedures shall address the circumstances in which persons of the opposite sex, other than husband and wife, will be allowed to occupy a bedroom, if such an arrangement is agreeable to the residents or the residents' legal representatives.

(r) The transfer and discharge rights of residents of a facility are as follows:

(1) As used in this section, "interfacility transfer and discharge" means the movement of a resident to a bed outside of the licensed facility.

(2) As used in this section, "intrafacility transfer" means the movement of a resident to a bed within the same licensed facility.

(3) When a transfer or discharge of a resident is proposed, whether intrafacility or interfacility, provision for continuity of care shall be provided by the facility.

(4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:

(A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) the safety of individuals in the facility is endangered;

(D) the health of individuals in the facility would otherwise be endangered;

(E) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(F) the facility ceases to operate.

(5) When the facility proposes to transfer or discharge a resident under any of the circumstances specified in subdivision (4)(A), (4)(B), (4)(C), (4)(D), or (4)(E), the resident's clinical records must be documented. The documentation must be made by the following:

(A) The resident's physician when transfer or discharge is necessary under subdivision (4)(A) or (4)(B).

(B) Any physician when transfer or discharge is necessary under subdivision (4)(D).

(6) Before an interfacility transfer or discharge occurs, the facility must, on a form prescribed by the department, do the following:

(A) Notify the resident of the transfer or discharge and the reasons for the move, in writing, and in a language and

manner that the resident understands. The health facility must place a copy of the notice in the resident's clinical record and transmit a copy to the following:

(i) The resident.

(ii) A family member of the resident if known.

(iii) The resident's legal representative if known.

(iv) The local long term care ombudsman program (for involuntary relocations or discharges only).

(v) The person or agency responsible for the resident's placement, maintenance, and care in the facility.

(vi) In situations where the resident is developmentally disabled, the regional office of the division of disability, aging, and rehabilitative services, who may assist with placement decisions.

(vii) The resident's physician when the transfer or discharge is necessary under subdivision (4)(C), (4)(D), (4)(E), or (4)(F).

(B) Record the reasons in the resident's clinical record.

(C) Include in the notice the items described in subdivision (9).

(7) Except when specified in subdivision (8), the notice of transfer or discharge required under subdivision (6) must be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(8) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(D) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(E) a resident has not resided in the facility for thirty (30) days.

(9) For health facilities, the written notice specified in subdivision (7) must include the following:

(A) The reason for transfer or discharge.

(B) The effective date of transfer or discharge.

(C) The location to which the resident is transferred or discharged.

(D) A statement in not smaller than 12-point bold type that reads, "You have the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana state department of health postmarked within ten (10) days after you receive this notice. If you request a hearing, it will be held within twenty-three (23) days after you receive this notice, and you will not be transferred from the facility earlier than thirty-four (34) days after you receive this notice of transfer or discharge unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana state department of health at the number listed below.".

(E) The name of the director and the address, telephone number, and hours of operation of the division.

(F) A hearing request form prescribed by the department.

(G) The name, address, and telephone number of the state and local long term care ombudsman.

(H) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.

(10) If the resident appeals the transfer or discharge, the health facility may not transfer or discharge the resident within thirty-four (34) days after the resident receives the initial transfer or discharge notice unless an emergency exists as provided under subdivision (8).

(11) If nonpayment is the basis of a transfer or discharge, the resident shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.

(12) The department shall provide a resident who wishes to appeal the transfer or discharge from a facility the opportunity to file a request for a hearing postmarked within ten (10) days following the resident's receipt of the written notice of the transfer or discharge from the facility.

(13) If a health facility resident requests a hearing, the department shall hold an informal hearing at the health facility within twenty-three (23) days from the date the resident receives the notice of transfer or discharge. The department shall attempt to give at least five (5) days' written notice to all parties prior to the informal hearing. The department shall issue a decision within thirty (30) days from the date the resident receives the notice. The health facility must convince the department by a preponderance of the evidence that the transfer or discharge is authorized under subdivision (4). If the department determines that the transfer is appropriate, the resident must not be required to leave the health facility within the thirty-four (34) days after the resident's receipt of the initial transfer or discharge notice unless an emergency exists under subdivision (8). Both the resident and the health facility have the right to administrative or judicial review under IC 4-21.5 of any decision or action by the department arising under this section. All hearings held de novo shall be held in the facility where the resident resides.

(14) An intrafacility transfer can be made only if **the transfer is necessary for:**

(A) ~~the transfer is necessary for~~ medical reasons as judged by the attending physician; or

(B) ~~the transfer is necessary for~~ the welfare of the resident or other persons.

(15) If an intrafacility transfer is required, the resident must be given notice at least two (2) days before relocation, except when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered;

(C) the resident's health improves sufficiently to allow a more immediate transfer; or

(D) an immediate transfer is required by the resident's urgent medical needs.

(16) The written notice of an intrafacility transfer must include the following:

(A) Reasons for transfer.

(B) Effective date of transfer.

(C) Location to which the resident is to be transferred.

(D) Name, address, and telephone number of the local and state long term care ombudsman.

(E) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.

(17) The resident has the right to relocate prior to the expiration of the two (2) ~~day~~ **days'** notice.

(18) Prior to any interfacility or involuntary intrafacility relocation, the facility shall prepare a relocation plan to prepare the resident for relocation and to provide continuity of care. In nonemergency relocations, the planning process shall include a relocation planning conference to which the resident, his or her legal representative, family members, and physician shall be invited. The planning conference may be waived by the resident.

(19) At the planning conference the resident's medical, psychosocial, and social needs with respect to the relocation shall be considered and a plan devised to meet these needs.

(20) The facility shall provide reasonable assistance to the resident to carry out the relocation plan.

(21) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(22) If the relocation plan is disputed, a meeting shall be held prior to the relocation with the administrator or his or her designee, the resident, and the resident's legal representative. An interested family member, if known, shall be invited. The purpose of the meeting shall be to discuss possible alternatives to the proposed relocation plan.

(23) A written report of the content of the discussion at the meeting and the results of the meeting shall be reviewed by:

(A) the administrator or his or her designee;

(B) the resident;

(C) the resident's legal representative; and

(D) an interested family member, if known;

each of whom may make written comments on the report.

(24) The written report of the meeting shall be included in the resident's permanent record.

(s) Residents have the right to have reasonable access to the use of the telephone for local or toll free calls for emergency and personal use where calls can be made without being overheard.

(t) Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of their financial affairs. Management does not include the safekeeping of personal items. If the facility agrees to manage the resident's funds, the facility must:

(1) provide the resident with a quarterly accounting of all financial affairs handled by the facility;

(2) provide the resident, upon the resident's request, with reasonable access, during normal business hours, to the written records of all financial transactions involving the individual resident's funds;

(3) provide for a separation of resident and facility funds;

(4) return to the resident, upon written request and within no later than fifteen (15) calendar days, all or any part of the resident's funds given the facility for safekeeping;

(5) deposit, unless otherwise required by federal law, any resident's personal funds in excess of one hundred dollars ($100) in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and that credits all interest earned on the resident's funds to his or her account (in pooled accounts, there must be a separate accounting for each resident's share);

(6) maintain resident's personal funds that do not exceed one hundred dollars ($100) in a noninterest-bearing account, interest-bearing account, or petty cash fund;

(7) establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf;

(8) provide the resident or the resident's legal representative with reasonable access during normal business hours to the funds in the resident's account;

(9) provide the resident or the resident's legal representative upon request with reasonable access during normal business hours to the written records of all financial transactions involving the individual resident's funds;

(10) provide to the resident or his or her legal representative a quarterly statement of the individual financial record and provide to the resident or his or her legal representative a statement of the individual financial record upon the request of the resident or the resident's legal representative; and

(11) convey, within thirty (30) days of the death of a resident who has personal funds deposited with the facility, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(u) Residents have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(v) Residents have the right to be free from:

(1) sexual **abuse;**

(2) physical **abuse;**
(3) mental abuse;
(4) corporal punishment;
(5) neglect; and
(6) involuntary seclusion.

(w) Residents have the right to be free from verbal abuse.

(x) Residents have the right to confidentiality of all personal and clinical records. Information from these sources shall not be released without the resident's consent, except when the resident is transferred to another health facility, when required by law, or under a third party payment contract. The resident's records shall be made immediately available to the resident for inspection, and the resident may receive a copy within five (5) working days, at the resident's expense.

(y) Residents have the right to be treated as individuals with consideration and respect for their privacy. Privacy shall be afforded for at least the following:
(1) Bathing.
(2) Personal care.
(3) Physical examinations and treatments.
(4) Visitations.

(z) Residents have the right to:
(1) refuse to perform services for the facility;
(2) perform services for the facility, if he or she chooses, when:
(A) the facility has documented the need or desire for work in the service plan;
(B) the service plan specifies the nature of the duties performed and whether the duties are voluntary or paid;
(C) compensation for paid duties is at or above the prevailing rates; and
(D) the resident agrees to the work arrangement described in the service plan.

(aa) Residents have the right to privacy in written communications, including the right to:
(1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident; and
(2) have access to stationery, postage, and writing implements at the resident's own expense.

(bb) Residents have the right and the facility must provide immediate access to any resident by:
(1) individuals representing state or federal agencies;
(2) any authorized representative of the state;
(3) the resident's individual physician;
(4) the state and area long term care ombudsman;
(5) the agency responsible for the protection and advocacy system for developmentally disabled individuals;
(6) the agency responsible for the protection and advocacy system for mentally ill individuals;
(7) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
(8) the resident's legal representative or spiritual advisor subject to the resident's right to deny or withdraw consent at any time; and
(9) others who are visiting with the consent of the resident subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(cc) Residents have the right to choose with whom they associate. The facility shall provide reasonable visiting hours, which should include at least twelve (12) hours a day, and the hours shall be made available to each resident. Policies shall also provide for emergency visitation at other hours. The facility shall not restrict visits from the resident's legal representative or spiritual advisor, except at the request of the resident.

(dd) The facility shall provide reasonable access to any resident, consistent with facility policy, by any entity or individual that provides health, social, legal, and other services to any resident, subject to the resident's right to deny or withdraw consent at any time.

(ee) The facility shall allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(ff) Residents have the right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.

(gg) Residents have the right to individual expression through retention of personal clothing and belongings as space permits unless to do so would infringe upon the rights of others or would create a health or safety hazard.

(hh) The facility shall exercise reasonable care for the protection of residents' property from loss and theft. The administrator or his or her designee is responsible for investigating reports of lost or stolen resident property and that the results of the investigation are reported to the resident.

(ii) If the resident's personal laundry is laundered by the facility, the facility shall identify these items in a suitable manner at the resident's request.

(jj) Residents may use facility equipment, such as washing machines, if permitted by **the** facility.

(kk) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (u) or (v) is an offense;
(2) subsection (b), (c), (d), (j), (k), (n), (o)(4), (r), (w), (x), (y), (z), (aa), (bb), or (dd) is a deficiency;
(3) subsection (a), (e), (f), (g), (h), (i), (l), (o)(1), (o)(2),

(o)(3), (p), (q), (s), (t), (cc), (ee), (ff), (gg), (hh), or (ii) is a noncompliance; and

(4) subsection (m) or (jj) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1562, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1914, eff Mar 1, 2003)

SECTION 9. 410 IAC 16.2-5-1.3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.3 Administration and management

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 1.3. (a) The licensee is responsible for compliance with all applicable laws. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including the following:

(1) Initial orientation of all employees.

(2) A continuing inservice education and training program for all employees.

(3) Provision of supervision for all employees.

(c) The licensee shall appoint an administrator licensed ~~pursuant to~~ **under** IC 25-19-1 and delegate to that administrator the authority to organize and implement the day-to-day operations of the facility. The licensee, if a licensed administrator, may act as the administrator of the facility.

(d) The licensee shall notify the director within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility. The responsibilities of the administrator shall include, but are not limited to, the following:

(1) Informing the division within twenty-four (24) hours of becoming aware of an unusual occurrence that directly threatens the welfare, safety, or health of a resident. Notice of unusual occurrence may be made by telephone, followed by a written report, or by a written report only that is faxed or sent by electronic mail to the division within the twenty-four (24) hour time period. Unusual occurrences include, but are not limited to:

(A) epidemic outbreaks;

(B) poisonings;

(C) fires; or

(D) major accidents.

If the division cannot be reached, a call shall be made to the emergency telephone number published by the division.

(2) Promptly arranging for or assisting with the provision of medical, dental, podiatry, or nursing care or other health care services as requested by the resident or resident's legal representative.

(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring the facility maintains, on the premises, an accurate record of actual time worked that indicates the employee's full name and the dates and hours worked during the past twelve (12) months.

(5) Posting the results of the most recent annual survey of the facility conducted by state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.

(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) The facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:

(1) the range of services offered; ~~resident~~

(2) residents' rights;

(3) personnel administration; and

(4) facility operations.

Such policies shall be made available to residents upon request.

(i) The facility must maintain a written fire and disaster preparedness plan to assure continuity of care of residents in cases of emergency as follows:

(1) Fire exit drills in facilities shall include the transmission of a fire alarm signal and simulation of emergency fire conditions, except that the movement of nonambulatory residents to safe areas or to the exterior of the building is not required. Drills shall be conducted quarterly on each shift to familiarize all facility personnel with signals and emergency action required under varied conditions. At least twelve (12) drills shall be held every year. When drills are conducted between 9 p.m. and 6 a.m., a coded announcement may be used instead of audible alarms.

(2) At least every six (6) months, a facility shall attempt to hold the fire and disaster drill in conjunction with the local fire department. A record of all training and drills shall be documented with the names and signatures of the personnel present.

(j) If professional or diagnostic services are to be provided to the facility by an outside resource, either individual or institutional, an arrangement shall be developed between the licensee and the outside resource for the provision of the services. If a written agreement is used, it shall specify:

(1) the responsibilities of both the facility and the outside resource;

(2) the qualifications of the outside resource staff;

(3) a description of the type of services to be provided, including action taken and reports of findings; and

(4) the duration of the agreement.

(k) The facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(l) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health care professional. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(m) The director of the Alzheimer's and dementia care unit shall do the following:

(1) Oversee the operation of the unit.

(2) Ensure that personnel assigned to the unit receive required inservice training.

(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

~~(l)~~ **(n)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), ~~or~~ (g), **or (m)** is a deficiency;

(2) subsection (b), (c), (d), (e), (f), (h), (i), ~~or~~ (j), or **(l)** is a noncompliance; and

(3) subsection (k) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1565, eff Apr 1, 1997; errata filed Jan 10, 1997, 4:00 p.m.: 20 IR 1593; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1919, eff Mar 1, 2003)

SECTION 10. 410 IAC 16.2-5-1.4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.4 Personnel

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 1.4. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Appropriate inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) Staff shall be sufficient in number, qualifications, and training in accordance with applicable state laws and rules to meet the twenty-four (24) hour scheduled and unscheduled needs of the residents and services provided. The number, qualifications, and training of staff shall depend on skills required to provide for the specific needs of the residents. A minimum of one (1) awake staff person, with current CPR and first aid certificates, shall be on site at all times. If fifty (50) or more residents of the facility regularly receive residential nursing services ~~and/or~~ **or** administration of medication, **or both,** at least one (1) nursing staff person shall be on site at all times. Residential facilities with over one hundred (100) residents regularly receiving residential nursing services ~~and/or~~ **or** administration of medication, **or both,** shall have at least one (1) additional nursing staff person awake and on duty at all times for every additional fifty (50) residents. Personnel shall be assigned only those duties for which they are trained to perform. Employee duties shall conform with written job descriptions.

(c) Any unlicensed employee providing more than limited assistance with the activities of daily living must be either a certified nurse aide or a home health aide. Existing facilities that are not licensed on the date of adoption of this rule and that seek licensure within one (1) year of adoption of this rule have two (2) months in which to ensure that all employees in this category are either a certified nurse aide or a home health aide.

(d) Prior to working independently, each employee shall be given an orientation to the facility by the supervisor (or his or her designee) of the department in which the employee will work. Orientation of all employees shall include the following:

(1) Instructions on the needs of the specialized populations:

~~served in the facility~~

(A) aged;

(B) developmentally disabled;

(C) mentally ill;

(D) dementia; or

(E) children;

served in the facility.

(2) A review of the facility's policy manual and applicable procedures, including:

(A) organization chart;

(B) personnel policies;

(C) appearance and grooming policies for employees; and

(D) residents' rights.

(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures.

(4) Review of ethical considerations and confidentiality in resident care and records.

(5) For direct care staff, personal introduction to, and instruction in, the particular needs of each resident to whom the employee will be providing care.

(6) Documentation of the orientation in the employee's personnel record by the person supervising the orientation.

(e) There shall be an organized inservice education and training program planned in advance for all personnel in all departments at least annually. Training shall include, but is not limited to, residents' rights, prevention and control of infection, fire prevention, safety, ~~and~~ accident prevention, the needs of specialized populations served, medication administration, and nursing care, when appropriate, as follows:

(1) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel. For nursing personnel, this shall include at least eight (8) hours of inservice per calendar year and four (4) hours of inservice per calendar year for nonnursing personnel.

(2) In addition to the above required inservice hours, ~~in facilities with distinct dementia units,~~ staff who have contact with ~~such~~ residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months and three (3) hours annually thereafter to meet the needs **or** preferences, **or both,** of cognitively impaired residents effectively and to gain understanding of the current standards of care for residents with dementia.

(3) Inservice records shall be maintained and shall indicate the following:

(A) Time, date, and location.

(B) Name of instructor.

(C) Title of instructor.

(D) Name of participants.

(E) Program content of inservice.

The employee will acknowledge attendance by written signature.

(f) A health screen shall be required for each employee of a facility prior to resident contact. The screen shall include a tuberculin skin test, using the Mantoux method (5 TU, PPD), unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The facility must assure the following:

(1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. The first tuberculin skin test must be read prior to the employee starting work. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.

(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.

(3) The facility shall maintain a health record of each employee that includes reports of all employment-related health screenings.

(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(g) The facility must prohibit employees with communicable disease or infected skin lesions from direct contact with residents or their food if direct contact will transmit the disease. An employee with signs and symptoms of communicable disease, including, but not limited to, an infected or draining skin lesion, shall be handled according to a facility's policy regarding direct contact with residents, their food, or resident care items until the condition is resolved. Persons with suspected or proven active tuberculosis will not be permitted to work until determined to be noninfectious and documentation is provided for the employee record.

(h) The facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:

(1) Name and address of employee.

(2) Social Security number.

(3) Date of beginning employment.

(4) Past employment, experience, and education, if applicable.

(5) Professional licensure or registration number, if applicable.

(6) Position in the facility and job description.

(7) Documentation of orientation to the facility, including residents' rights, and to the specific job skills.

(8) Signed acknowledgment of orientation to residents' rights.

(9) Performance evaluations in accordance with facility policy.
(10) Date and reason for separation.

(i) The employee personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(j) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (b), (c), or (g) is a deficiency;
(2) subsection (a), (d), (e), or (f) is a noncompliance; and
(3) subsection (h) or (i) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1567, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1921, eff Mar 1, 2003)

SECTION 11. 410 IAC 16.2-5-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-2 Evaluation
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 2. (a) An evaluation of the individual needs of each resident shall be initiated prior to admission and shall be updated at least semiannually and upon a known substantial change in the resident's condition, or more often at the resident's or facility's request. A licensed nurse shall evaluate the nursing needs of the resident.

(b) The preadmission evaluation (interview) shall provide the baseline information for the initial evaluation. Subsequent evaluations shall compare the resident's current status to his or her status on admission and shall be used to assure that the care the resident requires is within the range of personal care and supervision provided by a residential care facility.

(c) The scope and content of the evaluation shall be delineated in the facility policy manual, but at a minimum the needs assessment shall include an evaluation of the following:
(1) The resident's physical, **cognitive,** and mental status.
(2) The resident's independence in the activities of daily living.
(3) The resident's weight taken on admission and semiannually thereafter.
(4) If applicable, the resident's ability to self-administer medications.

(d) The evaluation shall be documented in writing and kept in the facility.

(e) Following completion of an evaluation, the facility, using appropriately trained staff members, shall identify and document the services to be provided by the facility, as follows:
(1) The services offered to the individual resident shall be appropriate to the:
(A) scope;
(B) frequency;
(C) need; and
(D) preference;
of the resident.
(2) The services offered shall be reviewed and revised as appropriate and discussed by the resident and facility as needs or desires change. Either the facility or the resident may request a service plan review.
(3) The agreed upon service plan shall be signed and dated by the resident, and a copy of the service plan shall be given to the resident upon request.
(4) No identification and documentation of services provided is needed if evaluations subsequent to the initial evaluation indicate no need for a change in services.
(5) If administration of medications ~~and/or~~ **or** the provision of residential nursing services, **or both,** is needed, a licensed nurse shall be involved in identification and documentation of the services to be provided.

(f) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), (b), or (e) is a deficiency; and
(2) subsection (c) or (d) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-5-2; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1575, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003)

SECTION 12. 410 IAC 16.2-5-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-4 Health services
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 4. (a) Each resident shall have a primary care physician selected by the resident. ~~If desired, the~~

(b) Each resident may ~~designate~~ **have** a dentist **selected by the resident.**

~~(b)~~ **(c)** Each facility shall choose whether or not it administers medication ~~and/or~~ **or** provides residential nursing care, **or both.** These policies shall be delineated in the facility policy manual and clearly stated in the admission agreement.

~~(c)~~ **(d)** Personal care, and assistance with activities of daily living, shall be provided based upon individual needs and preferences.

~~(d)~~ **(e)** The administration of medications and the provision of residential nursing care shall be as ordered by the resident's physician and shall be supervised by a licensed nurse on the

premises or on call as follows:

(1) Medication shall be administered by licensed nursing personnel or qualified medication aides.

(2) The resident shall be observed for effects of medications. Documentation of any undesirable effects shall be contained in the clinical record. The physician shall be notified immediately if undesirable effects occur, and such notification shall be documented in the clinical record.

(3) The individual administering the medication shall document the administration in the individual's medication and treatment records that indicate the:

(A) time;

(B) name of medication or treatment;

(C) dosage (if applicable); and

(D) name or initials of the person administering the drug or treatment.

(4) Preparation of doses for more than one (1) scheduled administration is not permitted.

(5) Injectable medications shall be given only by licensed personnel.

(6) PRN medications may be administered by a qualified medication aide (QMA) only upon authorization by a licensed nurse or physician. The QMA must receive appropriate authorization for each administration of a PRN medication. All contacts with a nurse or physician not on the premises for authorization to administer PRNs shall be documented in the nursing notes indicating the time and date of the contact.

(7) Any error in medication administration shall be noted in the resident's record. The physician shall be notified of any error in medication administration when there are any actual or potential detrimental effects to the resident.

~~(e)~~ **(f)** The facility shall have available on the premises or on call the services of a licensed nurse at all times.

~~(f)~~ **(g)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection ~~(d)(1),~~ ~~(d)(2),~~ **(e)(1), (e)(2),** or ~~(d)(5)~~ **(e)(5)** is an offense;

(2) subsection (a), ~~(c),~~ ~~(d)(3),~~ ~~(d)(6),~~ ~~(d)(7),~~ **(d), (e)(3), (e)(6), (e)(7),** or ~~(e)~~ **(f)** is a deficiency;

(3) subsection ~~(d)(4)~~ **(e)(4)** is a noncompliance; and

(4) subsection ~~(b)~~ **(c)** is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-4; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1576, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 22, 2004 at 2:00 p.m., at the Indiana State Department of Health Building, 2 North Meridian Street, Yoho Board Room, 3rd Floor, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments concerning comprehensive and residential care health facilities, a definition of cognitive, additional inservice educational requirements of facility personnel, qualifications for a director of an Alzheimer's and dementia special care unit, facilities providing a resident a copy of the Alzheimer's and dementia care unit disclosure form, and resident behavior and facility practices, health services, and residents' rights. Copies of these rules are now on file at the Health Care Regulatory Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #03-258

DIGEST

Amends 760 IAC 1-60 regarding physician specialty classes, discounts, and rates for part-time and retired physicians. Effective July 1, 2004.

760 IAC 1-60-3
760 IAC 1-60-5

SECTION 1. 760 IAC 1-60-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-60-3 List of physician specialty classes

Authority: IC 34-18-5-2
Affected: IC 34-18-5-2

Sec. 3. The list of physician specialty classes required by IC 34-18-5-2 is as follows:

Indiana Department of Insurance
Patient's Compensation Fund
Physician Class Plan
Class 0

ISO Code	Specialty
80001	Resident Nonmoonlighting
80221	Resident Moonlighting (No ER)
80230	Aerospace Medicine
80231	General Preventive Medicine – No Surgery
80234	Pharmacology – Clinical
80236	Public Health
80240	Legal Medicine and Forensic Medicine
80248	Nutrition
80249	Psychiatry (Including Child)

80250	Psychoanalysis
80251	Psychosomatic Medicine
~~80253~~	~~Radiology – No Surgery~~
80254	Allergy
80256	Dermatology – No Surgery
80263	Ophthalmology – No Surgery
80266	Pathology – No Surgery

Class 1

ISO Code	Specialty
80233	Occupational Medicine
80235	Physical Medicine and Rehabilitation
80237	Diabetes – No Surgery
80238	Endocrinology – No Surgery
80239	Family Practice – No Surgery
80241	Gastroenterology – No Surgery
80242	General Practice – No Surgery
80243	Geriatrics – No Surgery
80244	Gynecology – No Surgery
80245	Hematology – No Surgery
80246	Infectious Disease – No Surgery
80247	Rhinology – No Surgery
80252	Rheumatology – No Surgery
80255	Cardiovascular Disease – No Surgery
80257	Internal Medicine – No Surgery
80258	Laryngology – No Surgery
80259	Neoplastic Disease – No Surgery
80260	Nephrology – No Surgery
80261	Neurology (Including Child) – No Surgery
80262	Nuclear Medicine
80264	Otology – No Surgery
80265	Otorhinolaryngology – No Surgery
80267	Pediatrics – No Surgery
80268	Physicians (Not Otherwise Classified) – No Surgery
80269	Pulmonary Disease – No Surgery
80420	Family Physicians – No Surgery

Class 2

ISO Code	Specialty
80223	Resident Moonlighting (with ER)
80253	**Radiology – No Surgery**
80280	Radiology – Minor Surgery
80282	Dermatology – Minor Surgery
80289	Ophthalmology – Minor Surgery
80292	Pathology – Minor Surgery
~~80424~~	~~Emergency Medicine~~
80425	Radiation Therapy – Not Otherwise Classified
80431	Shock Therapy

Class 3

ISO Code	Specialty
80109	Physicians – No Major Surgery
80114	Surgery – Ophthalmology
80132	Physicians (Not Otherwise Classified) – Minor Surgery
80172	Physician (Not Otherwise Classified) – No Major Surgery
80270	Rhinology – Minor Surgery
80271	Diabetes – Minor Surgery
80272	Endocrinology – Minor Surgery
80273	Family Practice – Minor Surgery
80274	Gastroenterology – Minor Surgery
80275	General Practice – Minor Surgery
80276	Geriatrics – Minor Surgery
80277	Gynecology – Minor Surgery
80278	Hematology – Minor Surgery
80279	Infectious Diseases – Minor Surgery
80281	Cardiovascular Disease – Minor Surgery
80283	Intensive Care Medicine – Minor Surgery
80284	Internal Medicine – Minor Surgery
80285	Laryngology – Minor Surgery
80286	Neoplastic Diseases – Minor Surgery
80287	Nephrology – Minor Surgery
80288	Neurology (Including Child) – Minor Surgery
80290	Otology – Minor Surgery
80291	Otorhinolaryngology – Minor Surgery
80293	Pediatrics – Minor Surgery
80294	Physicians (Not Otherwise Classified) – Minor Surgery
80421	Family Physicians (GP) – Minor Surgery – No OB
80422	Catheterization, Not Otherwise Classified
80424	**Emergency Medicine – No Surgery**

Class 4

ISO Code	Specialty
80000	Family Practice – with OB
80101	Broncho-Esophagology
~~80102~~	~~Emergency Medicine – No Major Surgery~~
80115	Surgery – Colon and Rectal
80117	Surgery – GP (Not Primarily Engaged in Surgery)
80145	Surgery – Urological
80151	**Surgery – Anesthesiology**
80163	Radiation Therapy – Employed Physicians or Surgeons with Major Surgery
80428	Physicians – Minor Invasive Procedures – Myelography
80434	Physicians – Minor Invasive Procedures – Lymphangiography
80437	Physicians – Minor Invasive Procedures – Acupuncture
80440	Physicians – Minor Invasive Procedures – Laparoscopy
80443	Physicians – Minor Invasive Procedures – Colonoscopy
80446	Physicians – Minor Invasive Procedures – Needle Biopsy
80449	Radiopaque Dye Injection

Class 5

ISO Code	Specialty
80102	**Emergency Medicine – No Major Surgery**
80103	Physicians – Surgery – Endocrinology

80104	Physicians – Surgery – Gastroenterology
80105	Physicians – Surgery – Geriatrics
80106	Surgery – Laryngology
80107	Physicians – Surgery – Neoplastic
80108	Physicians – Surgery – Nephrology
~~80151~~	~~Surgery – Anesthesiology~~
80158	Surgery – Otology
80159	Surgery – Otorhinolaryngology
80160	Physicians – Surgery – Rhinology
80419	Family or General Practice – Major Surgery

Class 6

ISO Code	Specialty
80141	Surgery – Cardiac
80143	Surgery – General Not Otherwise Classified
80155	Surgery – Plastic – Otorhinolaryngology
80156	Surgery – Plastic Not Otherwise Classified
80157	Surgery – Emergency Medicine
80166	Surgery – Abdominal
80167	Surgery – Gynecology
80169	Surgery – Hand
80170	Surgery – Head and Neck

Class 7

ISO Code	Specialty
80144	Surgery – Thoracic
80146	Surgery – Vascular
80150	Surgery – Cardiovascular Disease
80154	Surgery – Orthopedic
80171	Surgery – Traumatic

Class 8

ISO Code	Specialty
80152	Surgery – Neurology (Including Child)
80153	Surgery – Obstetrics/Gynecology
80168	Surgery – Obstetrics

(Department of Insurance; 760 IAC 1-60-3; filed Oct 23, 1998, 2:45 p.m.: 22 IR 754; filed Aug 6, 1999, 2:35 p.m.: 22 IR 3934)

SECTION 2. 760 IAC 1-60-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-60-5 Part-time and retired physicians

Authority: IC 34-18-5-2
Affected: IC 25-22.5-1-1.1

Sec. 5. (a) A physician who practices medicine on a part-time basis shall pay a reduced surcharge as follows:

(1) A physician who practices medicine ten (10) hours per week or less shall receive a credit equal to seventy-five percent (75%) of the surcharge amount.

(2) A physician who practices medicine more than ten (10) but less than twenty (20) hours per week shall receive a credit equal to fifty percent (50%) of the surcharge amount.

(b) Medical school faculty shall receive a credit equal to sixty-seven percent (67%) of the surcharge amount. As used in this subsection, "medical school faculty" means a physician engaged in research or teaching at a medical school as defined in IC 25-22.5-1-1.1(h). To be eligible for the credit, no more than thirty percent (30%) of the physician's time may be spent treating patients whose treatment is unrelated to the physician's duties at the medical school.

(c) Newly licensed physicians shall receive a credit equal to fifty percent (50%) of the surcharge amount during their first year of practice and twenty-five percent (25%) during their second year. For purposes of this subsection, a physician is considered newly licensed for two (2) years after completion of a residency program or a fellowship program in their medical specialty or the fulfillment of a military obligation in remuneration for medical school tuition.

(d) A retired physician shall pay an annual surcharge in the amount of ~~three~~ **five** hundred dollars ~~($300).~~ **($500).**

(e) No more than one (1) credit may be applied to a physician in any policy year. *(Department of Insurance; 760 IAC 1-60-5; filed Oct 23, 1998, 2:45 p.m.: 22 IR 756; filed Aug 6, 1999, 2:35 p.m.: 22 IR 3936)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 23, 2004 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to 760 IAC 1-60 regarding physician specialty classes, discounts, and rates for part-time and retired physicians. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 856 INDIANA BOARD OF PHARMACY

Proposed Rule
LSA Document #03-326

DIGEST

Amends 856 IAC 1-33-1 to revise the definition of counseling and to add the definitions of offer and patient. Adds 856 IAC 1-33-1.5 to establish the requirements for an offer. Amends 856 IAC 1-33-2 to revise the requirements for patient counseling. Amends 856 IAC 1-33-4 to revise the institutional patient exception. Adds 856 IAC 1-33-5 to establish the grounds for discipline for patient counseling violations. Effective 30 days after filing with the secretary of state.

856 IAC 1-33-1 **856 IAC 1-33-4**
856 IAC 1-33-1.5 **856 IAC 1-33-5**
856 IAC 1-33-2

SECTION 1. 856 IAC 1-33-1 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-1 Definitions
Authority: IC 25-26-13-4
Affected: IC 25-26-13-4

Sec. 1. ~~As used in~~ **The following definitions apply throughout** this rule:

(1) "Counseling" means ~~effective~~ **appropriate** communication, by a pharmacist, **to a patient, as defined in subdivision (3),** of information ~~in order to improve~~ **for the purpose of improving** therapeutic outcomes by maximizing the proper use of ~~prescription medications~~ **drugs** and devices **dispensed pursuant to prescriptions.**

(2) "Offer" means a statement that is verbal or, only if necessary for an individual patient, nonverbal, for example, printed or written, that clearly informs the patient that a pharmacist is available, at the time the offer is made, to counsel the patient, including, but not limited to, giving information to or answering questions, or both, from the patient.

(3) "Patient" means the following:

(A) The individual for whom a prescription was issued.

(B) The caregiver of the individual for whom a prescription was issued.

(C) The agent of the individual for whom a prescription was issued.

(Indiana Board of Pharmacy; 856 IAC 1-33-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)

SECTION 2. 856 IAC 1-33-1.5 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-33-1.5 Offer requirements
Authority: IC 25-26-13-4
Affected: IC 25-26-13-10

Sec. 1.5. (a) The following can satisfy an offer:

(1) A pharmacist counseling the patient.

(2) A pharmacist intern/extern registered under IC 25-26-13-10 if:

(A) permitted by the pharmacist; and

(B) the counseling by the pharmacist intern/extern is followed by a bona fide offer for the pharmacist to counsel the patient and if the patient or patient's representative desires such counseling.

(3) A written notice containing the pharmacy's phone number and a bona fide offer when:

(A) a patient is not present and has not authorized the giving of information to another; or

(B) the drug or device is delivered by the United States Postal Service, parcel delivery, or hand delivery.

(4) Any personnel in the prescription department, as defined in 856 IAC 1-13-3(b)(3), making an offer to counsel, as defined in section 1(2) of this rule.

(b) The following cannot satisfy an offer:

(1) Making an offer for the patient to ask questions.

(2) Any other method that serves to shift the responsibility from the pharmacists to the patient for initiating the counseling or for selecting the informational content of the counseling.

(3) Relaying information through an intermediary, unless needed for translations, hearing impaired, or other situation beyond the control of the pharmacist.

(4) Using signs or other types of written notices or written information given to the patient with each drug dispensed.

(Indiana Board of Pharmacy; 856 IAC 1-33-1.5)

SECTION 3. 856 IAC 1-33-2 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-2 Patient counseling requirements
Authority: IC 25-26-13-4
Affected: IC 25-26-13-16

Sec. 2. (a) Upon the receipt of a prescription or upon the subsequent refilling of a prescription, and following a review of the patient's prescription medication profile, the pharmacist shall be responsible for the initiation of an offer, **as set forth in section 1.5(a) of this rule,** to ~~discuss matters~~ counsel ~~which,~~ **the patient on matters that,** in the pharmacist's professional judgment, are significant to optimizing drug therapy. Depending upon the situation, these matters may include, but are not necessarily limited to, the following:

(1) The name and description of the medicine.

(2) The route, dosage form, dosage, route of administration, and duration of drug therapy.

(3) Special directions and precautions.

(4) Common adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur.

(5) Techniques for self-monitoring drug therapy.

(6) Proper storage.

(7) Prescription refill information.

(8) Action to be taken in the event of a missed dose.

(b) Counseling shall be in person, whenever practicable, or through access to a telephone service ~~which~~ **that** is toll-free for long distance calls and be held with the patient, the patient's caregiver, or the patient's representative.

(c) Alternative forms of patient information may be used to supplement verbal counseling when appropriate. Examples include written information leaflets, pictogram labels, and video

programs. Nothing in this subsection shall be construed to mean that supplements may be a substitute for verbal counseling when verbal counseling is practicable.

(d) Nothing in this rule shall be construed as requiring a pharmacist to provide counseling when a patient ~~refuses~~ **knowingly declines (waives)** the offer to counsel.

(e) Requesting or accepting, or both, a waiver for counseling for all prescriptions both present and future is not permitted. An offer must be made with each prescription-dispensing visit.

(f) The patient's declining of counseling must be documented in either written or electronic format. The required documentation may be on the same form as or with another pharmacy-related authorization, only if it is clear to the patient that the documentation form also contains the patient's intent to decline (waive) counseling. The documentation subject to this section shall be retained in the pharmacy licensed area or in a secure area under the pharmacy's control, which is readily available for inspection, for a period of not less than two (2) years. *(Indiana Board of Pharmacy; 856 IAC 1-33-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)*

SECTION 4. 856 IAC 1-33-4 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-4 Institutional patient exception
Authority: IC 25-26-13-4
Affected: IC 25-1-9

Sec. 4. The requirements for patient counseling, as described in this rule, shall not apply to patients residing in institutional facilities in Indiana as defined under ~~856 IAC 1-28-1(a).~~ **856 IAC 1-28.1-1(6).** *(Indiana Board of Pharmacy; 856 IAC 1-33-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1177; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)*

SECTION 5. 856 IAC 1-33-5 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-33-5 Patient counseling violations
Authority: IC 25-26-13-4
Affected: IC 25-26-13-4

Sec. 5. Violation of this rule shall be grounds for discipline by the board under either IC 25-1-9 or 856 IAC 1-20. *(Indiana Board of Pharmacy; 856 IAC 1-33-5)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 12, 2004 at 10:00 a.m., at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Conference Center Room W064, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on proposed amendments to revise the definition of counseling and to add the definitions of offer and patient, to revise the requirements for patient counseling, to revise the institutional patient exception, to establish the requirements for an offer, and to establish the grounds for discipline for patient counseling violations. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 862 PRIVATE DETECTIVES LICENSING BOARD

Proposed Rule
LSA Document #03-313

DIGEST

Amends 862 IAC 1-1-3 to modify the experience requirements under IC 25-30-1-8 for a private detective license to address the areas of employment to meet the experience requirement. Effective 30 days after filing with the secretary of state.

862 IAC 1-1-3

SECTION 1. 862 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

862 IAC 1-1-3 Experience requirement
Authority: IC 25-30-1-5.5
Affected: IC 25-30-1-8

Sec. 3. (a) This section establishes the experience requirements under IC 25-30-1-8(a)(3) for a private detective license. All individual applicants, at least one (1) individual of a partnership applicant, and at least one (1) officer of a corporate applicant must meet the requirements in this section.

(b) The experience requirements shall be two (2) years of experience as verified by four thousand (4,000) hours of employment in any of the following areas or combination of areas:

(1) In private detective work having been issued an identification card as an employee under a licensee.

(2) As an investigator for the United States Department of Justice or for the United States Department of the Treasury.

(3) As a criminal investigator with the Armed Forces of the United States.

(4) As a sheriff's investigator.
(5) As a railroad detective.
(6) As a claims investigator for an insurance company.
(7) As a licensed and practicing attorney at law or as an investigator for a practicing attorney.
(8) As a police officer for any federal, state, or local unit of government.
(9) As a full-time manager or administrator for a licensed private security contractor agency or as a manager or administrator of a proprietary security force of twenty (20) or a lesser number with equivalent experience as determined by the board.

(Private Detectives Licensing Board; Private Detective License Law Rule III; filed Feb 5, 1979, 2:45 p.m.: 2 IR 299; filed Nov 15, 1994, 10:40 a.m.: 18 IR 880; readopted filed May 22, 2001, 9:54 a.m.: 24 IR 3237) NOTE: Transferred from State Police Department (240 IAC 4.1-1-3) to Private Detectives Licensing Board (862 IAC 1-1-3) by P.L.234-1989, SECTION 25, effective July 1, 1989.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 20, 2004 at 9:45 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room D, Indianapolis, Indiana the Private Detectives Licensing Board will hold a public hearing on proposed amendments to modify the experience requirements under IC 25-30-1-8 for a private detective license to address the areas of employment to meet the experience requirement. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

Indiana Register

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Notice of Intent
LSA Document #04-42

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rule to be readopted is as follows:

410 IAC 1-5 Sanitary Operation of Tattoo Parlors

Questions or comments on the readoption may be directed by mail to the Indiana State Department of Health, Office of Legal Affairs, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-19-3-4.1; IC 16-19-3-4.2.

60 Day Requirement (IC 4-22-2-19)

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

January 12, 2004

The Honorable Jerry Denbo, Chair
Administrative Rules Oversight Committee

Re: Notice of Delay in Adoption of Rule that prescribes a process which assessors can use in the gathering and processing of information for the application of the income capitalization method and the gross rent multiplier method

Dear Representative Denbo:

Notice of Delay

This is to notify you that pursuant to IC 4-22-2-19, the Department of Local Government Finance will not begin the rulemaking process within (60) sixty days after the effective date of the statue *[sic.]* that authorizes the rule. SB 1 that passed during the 2003 Legislative Short Session added IC 6-1.1-4-39. The Governor signed the Bill December 12, 2003, making the section effective immediately. Department of Local Government Finance shall adopt rules under IC 4-22-2 to carry out the particular section.

Reasons for Delay

This rule will establish standards for determining the lowest valuation of a property regularly used to rent or furnish residential accommodations for periods of thirty (30) days or more and have more than (4) four rental units. The assessor will be required to apply each of the following appraisal approaches: 1) the cost approach, 2) the sales comparison approach, and 3) the income capitalization approach, and the true tax value shall be the lowest of the three values. The rule will also establish a process by which the assessor may use the gross rent multiplier approach to value real property that has between one (1) and four (4) units; and mobile homes assessed under IC 6-1.1-7, if the assessor prefers. The Department did issue a memorandum to local assessing officials outlining the gross rent multiplier approach as soon as SB 1 passed, but has not yet determined the most efficient way to compile all the necessary steps to accomplish the legislative intent of this particular provision. Due to holidays and the on-going 2002 general reassessment including the Department's Lake County obligation, employees of the Department will be unable to devote quality time to this rule till the 2004 General Session is complete. There has also been speculation about the 2004 session altering this same provision, and it is in everyone's better interest to await the outcome.

Expected Date to Begin

The Department of Local Government Finance expects to begin the promulgation process in the near future. Once the Department has established a system of gathering and processing all the relevant information required under IC 6-1.1-4-39, it will be able to proceed forward in the rule making process.

Your understanding of these circumstances is greatly appreciated. If you have any further concerns or require additional information, please do not hesitate to contact me, at 317-233-5895 or hscheel@tcb.state.in.us. Thank you.

Sincerely,

Heather A. Scheel
General Counsel

Copy to: The Honorable Luke Kenley
Chuck Mayfield, Fiscal Analyst
Sarah Burkman, Attorney

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #03-235

January 12, 2004

The Honorable Jerry Denbo, Chair
Administrative Rules Oversight Committee

Re: Notice of Delay in Adoption of Rule to Assess the Real Property of Major Industrial Facilities

Dear Representative Denbo:

Notice of Delay

This is to notify you that pursuant to IC 4-22-2-19, that the Department of Local Government Finance was unable to begin the rulemaking process within (60) sixty days after the effective date of the statue *[sic.]* that authorizes the rule.[1] IC 6-1.1-8.7-9, effective July 1, 2002, states that the Department of Local Government Finance shall adopt rules under IC 4-22-2 to carry out the particular section.

Reasons for Delay

This rule establishes standards for the Department to utilize when assessing the real property of industrial facilities located in Indiana. This rule also provides instructions to local assessing officials and taxpayers that will assist them with informing the Department whether or not the industrial property needs to be reassessed by the Department. Due to a procedural error described above it appears that the Department did not begin to promulgate a rule within sixty (60) days of the Indiana General Assembly granting it authority to do so. The Department seeks

now to fulfill its statutory duties by informing the Committee of its error.

Expected Date to Begin

The Department of Local Government Finance will hold a public hearing January 23, 2004 at 11:00 a.m. on its proposed rule to governing the assessment of real property of industrial facilities. A copy of the proposed rule is attached.

Your understanding of these circumstances is greatly appreciated. If you have any further concerns or require additional information, please do not hesitate to contact me, at 317-232-5895 or by e-mail, hscheel@tcb.state.in.us. Thank you.

Sincerely,

Heather A. Scheel
General Counsel

Copy to: Sen. Luke Kenley
Sarah Burkman, Attorney for the Committee
Chuck Mayfield, Fiscal Analyst for Committee

[1] Notice of Intent was originally published April 1, 2002. This notice was published within 60 days of the effective date of the statute that granted the Department its authority to promulgate rules. The promulgation process did not result in adoption of a rule within one year, thus the Department was required to start the promulgation process over. A new notice of Intent was published September 1, 2003.

365 Day Notice (IC 4-22-2-25)

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-134

To: Honorable Jerry Denbo, Chairperson
C/o Ms. Susan Burkman
The Administrative Rules Oversight Committee

From: Donna Stolz Sembroski, Deputy General Counsel

Re: LSA #03-134, Amendments to Medicaid Lien Rule

Date: February 4, 2004

Cc: Chuck Mayfield, Legislative Services Agency
Rachel McGeever, General Counsel, FSSA
Melanie Bella, Assistant Secretary, OMPP

On behalf of the Family and Social Services Administration, Office of Medicaid Policy and Planning, I am submitting this memo to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The agency published its notice of intent to adopt a rule for the captioned document on June 1, 2003 (26 IR 3075). The proposed rule was published on July 31, 2003 and the public hearing was held on August 27, 2003. The agency has been considering public comments and taking the necessary steps to prepare for program implementation.

Any rule adopted by the agency must be approved the Family and Social Services Committee (see IC 12-8-3), a committee that meets only once per month. The committee currently has a number of vacancies and it is possible a monthly meeting could occur without a quorum and therefore without any action being taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to IC 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it is unlikely that the rule will be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by December 31, 2004.

This notice setting forth the expected date of approval of LSA #03-134 as December 31, 2004, is being submitted in a timely manner. February 6, 2004 is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#04-43(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 6-1-12 CONCERNING MODIFICATIONS TO REFERENCES FOR BOILERS AND THEIR CORRESPONDING PARTICULATE MATTER EMISSION LIMITATIONS AT REILLY INDUSTRIES INC.

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 6-1-12 to revise the particulate matter emission limitations at Reilly Industries Inc. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 6-1-12.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Reilly Industries (Reilly) has requested that IDEM amend the PM limitations for three boilers, 2722W, 2726S, and 186N to be expressed as a combined annual emission limit, or "bubble" limit. The "bubble" limit in tons per year will be the sum of the emissions limits for the individual three boilers. Reilly proposes that the "bubble" limit for the three boilers will be twelve and two-hundredths tons per year (12.2 tons/year). The short term limits for each boiler, the pound per million Btu limit, will not be combined and remain assigned to each individual boiler. Reilly requests a "bubble" limit for the three boilers so that the fuel can be burned between the boilers without specifying a limit on each individual boiler and achieve flexibility in their operation.

Reilly has requested that IDEM make corrections to boilers and their corresponding particulate matter (PM) emission limitations in 326 IAC 6-1-12 and to allow a combined limit for three boilers. The first correction is to remove the "100% natural gas" condition for boiler 186N. This boiler combusts oil. In a previous rulemaking, boilers burning only natural gas were regulated as "100% natural gas" and given no numerical emission limits, in 326 IAC 6-1-8.1 through 326 IAC 6-1-18. In this previous rulemaking, the numerical emission limits for 186N were erroneously removed and the boiler regulated as burning "100% natural gas."

The second correction is for the PM emission limitations for boiler 112E, the unit is a waste heat boiler, not combusting any fuel, and has no emissions. The source is proposing that the boiler, along with its corresponding emission limits be removed.

IDEM proposes to determine compliance with the annual emissions "bubble" limit, tons/year, by requiring monthly recordkeeping of fuel use and to calculate total emissions for each twelve (12) month period, a rolling total. This is similar to requirements of other sources with "bubble" limits and will provide more assurance of compliance with the annual emission limit.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Making corrections to boilers and specifying compliance requirements for combined limit in the rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law, but the United States Environmental Protection Agency is requiring compliance demonstrations for combined emission limits in the State Implementation Plan (SIP).
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Take no action to make the changes to the state rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

There is no federal law applicable to the proposed changes, however 326 IAC 6-1-12 is approved by the U.S. Environmental Protection Agency (U.S. EPA) as part of Indiana's State Implementation Plan (SIP). Indiana will send these rules to U.S. EPA to be approved as part of Indiana's SIP so federal law coincides with current operations at Reilly Industries, Inc.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative will have minimal fiscal impact since the source will most likely already be maintaining the necessary records to demonstrate compliance with the combined emission limit.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact based on Alternative 2.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#04-43(APCB) Reilly PM SIP
Susan Bem
c/o Administrative Assistant
Rules Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor East reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, 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 Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by March 31, 2004.

Additional information regarding this action may be obtained from Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD
#04-44(APCB)

READOPTION OF RULES CONCERNING EXEMPTIONS AND REGISTRATIONS FOR CONSTRUCTION OF NEW SOURCES, REGISTRATIONS, MINOR SOURCE OPERATING PERMIT PROGRAM, AND SOURCE SPECIFIC OPERATING AGREEMENT PROGRAM

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is proposing the readoption of 326 IAC 2-5.1-1 concerning exemptions to construction of new sources, 326 IAC 2-5.1-2 concerning construction of new sources that will operate under a registration, 326 IAC 2-5.5 concerning registrations, 326 IAC 2-6.1 concerning the minor source operating permit program, and 326 IAC 2-9 concerning the source specific operating agreement program. The purpose of this notice is to seek public comment on the draft rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking. *NOTE: IC 4-22-2.5-5 authorizes the governor, by executive order, to postpone the expiration of rules for one year. Executive Order #03-53, issued December 30, 2003, and printed at 27 IR 1663, postpones the expiration of 326 IAC 2-9-2.5, 326 IAC 2-9-3, 326 IAC 2-9-5, 326 IAC 2-9-7, and 326 IAC 2-9-14 until January 1, 2005.*

CITATIONS AFFECTED: 326 IAC 2-5.1-1; 326 IAC 2-5.1-2; 326 IAC 2-5.5; 326 IAC 2-6.1; 326 IAC 2-9.

AUTHORITY: IC 13-14-9; IC 13-14-9.5.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.".

BACKGROUND

Basic Purpose and Explanation of Limited Rulemaking Policy Alternatives

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. The rules in this notice, 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9, are subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits a written request and a basis for the request to the department or board that has rulemaking authority under Title 13 during the first comment period, that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. In the First Notice of Comment Period for the sunset rulemaking (LSA #00-44), comments were received on 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9.

Because a request that these rules be readopted separately and a basis for the request was submitted during the first comment period under IC 13-14-9.5-4, these rules were not readopted in the first sunset rulemaking and must now go through the IC 13-14-9 regular environmental rulemaking process. Limited rulemaking policy alternatives exist for these rules because the sources subject to these rules must be able to continue complying with the rules and not be in violation of federal and state law for operating without a permit. No changes to the existing rule language are being proposed, therefore, the department is publishing this Section 7 notice with the current text of the rules for public comment.

326 IAC 2-5.1-1, Exemptions from Construction of New Sources

The exemptions in 326 IAC 2-5.1-1 clarify which sources are subject to 326 IAC 2-5.1 concerning construction of new sources. If this

section of the rule were not available, there would not be a clear mechanism determining applicability of the rule. This rule has been beneficial to the public and to businesses because it clarifies the applicability of the rule.

326 IAC 2-5.1-1 was adopted in 1998 and will expire on January 1, 2005.

The number of sources covered by 326 IAC 2-5.1-1 is unknown. This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-5.1-1. IDEM proposes no changes to this rule.

326 IAC 2-5.1-2 and 326 IAC 2-5.5, Registrations

The requirements of 326 IAC 2-5.1-2 and 326 IAC 2-5.5 apply to certain sources that are not required to obtain a permit under 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, 326 IAC 2-9, 326 IAC 2-10, or 326 IAC 2-11. Any source that is not exempt under 326 IAC 2-1.1-3(d), and that has a potential to emit less than one hundred (100) tons per year (TPY) for carbon monoxide, less than five (5) TPY for lead, or less than twenty-five (25) TPY of any other regulated pollutant, is required to obtain a registration from IDEM. Any source subject to 326 IAC 20-8 and consisting of only decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent also must register. The requirements of 326 IAC 2-5.1-2 are for the construction of a source that will obtain a registration to operate. The requirements of 326 IAC 2-5.5 provide instructions for obtaining operating approval under a registration. An operating permit is not necessary for these sources since operating conditions will be included in the registration. If this rule were not available, sources would be required to obtain a permit, which would be more costly to the source. These rules have been beneficial to the public and to businesses because they provide a one-time approval which does not expire, is inexpensive, and ensures the enforcement of important applicable requirements without adding complex permitting requirements.

326 IAC 2-5.1-2 and 326 IAC 2-5.5 sections 1 through 6 were adopted in 1998 and will expire on January 1, 2005.

The number of sources covered by 326 IAC 2-5.5 is about three hundred ten (310). This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-5.1-2 and 326 IAC 2-5.5. IDEM proposes no changes to these rules.

326 IAC 2-6.1, Minor Source Operating Permit Program

The minor source operating permit program at 326 IAC 2-6.1 requires sources that do not qualify for a registration under 326 IAC 2-5.5, but have a potential to emit that is below Title V thresholds to be permitted under the minor source operating permit program. The minor source operating permit program also covers sources subject to 326 IAC 20-8 that do not qualify for the registration program and medical waste incinerators subject to 40 CFR 60, Subpart Ec.

If this rule were not available, air emissions from these sources would be unpermitted.

The minor source operating permit program rule has been beneficial to the public and to businesses because it provides a program that protects the environment using a less complex permit than for larger sources. This program also provides a simple compliance tool for small sources and is less expensive than a major permit.

326 IAC 2-6.1, sections 1, 4, and 7 were adopted in 1998 and will expire on January 1, 2005. Sections 2, 3, 5, and 6 were more recently adopted but are included in this readoption process to provide all sections of the rule with the same filing date.

The number of sources that are covered by 326 IAC 2-6.1 is about three hundred thirty-three (333). This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-6.1. IDEM proposes no changes to these rules.

326 IAC 2-9, Source Specific Operating Agreements

The source specific operating agreements (SSOAs) at 326 IAC 2-9 allow specific types of activities to operate under the pre-established terms of the SSOA. Although a source may not simultaneously operate under more than one of the same type of SSOA or under a SSOA and some other type of operating permit, sources can operate under up to four (4) different SSOAs, so long as the total potential to emit for any regulated pollutant, as limited by the SSOAs, does not exceed major source levels. In all, there are twenty-three (23) separate SSOAs available to applicants, covering thirteen (13) specific types of activities. Although final issuance of a SSOA is appealable, there is no public comment period. Except for coal mining and some stone crushing facilities, sources operating under a SSOA do not have an annual fee but must file an annual compliance certification. A SSOA does not need to be renewed as long as the source complies with the operational limits in the agreement.

Those operating under a SSOA not only avoid participation in an operating permit program, but in some instances can also avoid the need for a construction permit because certain SSOAs limit emissions to below twenty-five (25) tons per year (TPY), which is the new source construction permit threshold.

If this rule were not available, these sources would be required to obtain a Title V permit or would have to limit potential to emit through a FESOP.

This rule has been beneficial to the public and to businesses because it provides an easy and inexpensive application process for sources with a large potential to emit and low actual emissions. SSOAs are simple, one-time operating agreements that provide the applicable requirements and necessary compliance monitoring to assure the potential to emit is limited below the major source thresholds.

Most sections of 326 IAC 2-9 were adopted in 1997 and under IC 13-14-9.5 would expire on January 1, 2004. An extension of one year, pursuant to IC 13-14-9.5 has been granted by the Governor, so these sections expire January 1, 2005.

Nearly seven hundred (700) sources are covered by 326 IAC 2-9. This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-9. IDEM proposes no changes to these rules.

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

The federal air permitting program deals only with major sources, leaving the permitting of smaller sources to the state programs. These rules all concern sources that are either not required to be permitted under the federal permitting programs, or have taken limits to avoid being subject to the federal permitting program. The requirements in these rules are not new, but are currently in the state rules.

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

The following information is provided with each requirement not imposed under federal law:

(1) *Environmental Circumstance*: The environmental circumstance or hazard dictating the imposition of the requirement in order to protect human health and the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.

(2) *Fiscal Impact*: The estimated fiscal impact and expected benefits of the requirement, based on the extent to which the requirement exceeds the requirements of federal law.

(3) *Reference Material*: The availability for public inspection of all materials relied on by IDEM in the development of the requirement including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data,

analyses of methods to effectively implement the proposed rule, and other background data.

A: 326 IAC 2-5.1-1, Exemptions to Construction of New Sources
1. *Environmental Circumstance*: The exemptions to construction of new sources are specific state provisions developed to guide sources to the appropriate permitting program.
2. *Fiscal Impact*: The exemptions save qualified sources the cost of permit fees.
3. *Reference Material*: This type of material was not applicable to the development of the requirement.
B: 326 IAC 2-5.1-2 and 326 IAC 2-5.5, Registrations
1. *Environmental Circumstance*: Registrations are specific state requirements developed to regulate small sources in Indiana without the financial and administrative burden of the federal program.
2. *Fiscal Impact*: These registration programs have been in place since the early 1980s. The current filing fee is one hundred dollars ($100) to be submitted with any application under 326 IAC 2-5.5, and a fee of five hundred dollars ($500) for the construction of a new source under 326 IAC 2-5.1-2.
3. *Reference Material*: This type of material was not applicable to the development of the requirement.
C: 326 IAC 2-6.1, Minor Source Operating Program
1. *Environmental Circumstance*: Minor source operating permits are specific state requirements developed to regulate small sources in Indiana without the financial and administrative burden of the federal program.
2. *Fiscal Impact*: A state operating permit program has been in place since the early 1980s. The current filing fee is one hundred dollars ($100) to be submitted with the application, and an annual operating fee of two hundred dollars ($200). There is no renewal fee.
3. *Reference Material*: This type of material was not applicable to the development of the requirement.
D: 326 IAC 2-9, Source Specific Operating Agreements
1. *Environmental Circumstance*: Source specific operating agreements (SSOAs) are specific state programs developed to regulate small sources in Indiana without the financial and administrative burden of the federal program.
2. *Fiscal Impact*: The SSOAs have been in place since the 1997. The current filing fee is one hundred dollars ($100) to be submitted with any application under 326 IAC 2-9, and a fee of five hundred dollars ($500) for a combined application submittal for up to four SSOAs. In opting to be subject to a SSOA, the source would not be paying the higher fees associated with a FESOP or Title V permit.
3. *Reference Material*: This type of material was not applicable to the development of the requirement.

Potential Fiscal Impact

If any of these rules expire, the fees associated with them would no longer be paid to the State. It is not possible to calculate the fiscal impact of not regulating sources under these programs, except that SSOAs would be subject to either Title V or FESOP and required to pay the fees associated with the applicable permit program. If the rules are amended, the potential fiscal impact will not be assessable until the nature of the rule amendments being proposed is known. If the rules are readopted with no changes, there will be no fiscal impact to the sources, the department, or citizens.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6021 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on: 326 IAC 2-5.1-1, Exemptions to Construction of New Sources; 326 IAC 2-5.1-2, Registrations for Construction of New Sources; 326 IAC 2-5.5, Registrations; 326 IAC 2-6.1, Minor Source Operating Permit Program; and 326 IAC 2-9, Source Specific Operating Agreement Program. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) Rule 326 IAC 2-9 will expire on January 1, 2005, by extension of the Governor pursuant to IC 13-14-9.5. This rule is necessary to the operation of a comprehensive permitting program under 326 IAC 2.

(2) Rules 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, and 326 IAC 2-6.1, will expire on January 1, 2005, pursuant to IC 13-14-9.5. These rules are necessary to the operation of a comprehensive permitting program under 326 IAC 2.

(3) These rules provide a less costly and burdensome process for relatively small sources of air pollution to comply with air permitting requirements.

(4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(5) The draft rules are hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

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

#04-44(APCB)[Readoption of 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9]
Christine Pedersen
c/o Administrative Assistant
Rule Development Section
Office of Air 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 Tenth Floor East reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by March 31, 2004.

Additional information regarding this action may be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 2-5.1-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.1-1 Exemptions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. The following shall be exempt from the requirements of this rule:

(1) New sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or not specifically required to obtain a registration or permit under this rule.

(2) Existing sources operating pursuant to a permit issued under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(3) Existing sources operating pursuant to a source specific operating agreement under 326 IAC 2-9.

(4) Existing sources operating pursuant to a permit by rule under 326 IAC 2-10 or 326 IAC 2-11.

(Air Pollution Control Board; 326 IAC 2-5.1-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1008)

SECTION 2. 326 IAC 2-5.1-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.1-2 Registrations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 4-21.5-3-4; IC 13-15-4-9; IC 13-17

Sec. 2. (a) On and after the effective date of this rule, this section applies to the following new sources:

(1) Sources with a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO_2).

(ii) Nitrogen oxides (NO_x).

(C) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of volatile organic compounds (VOC) for sources not described in clause (D).

(D) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for sources that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(E) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(F) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(G) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(2) Any source that:

(A) is subject to 326 IAC 20-8; and

(B) consists of only decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent.

(b) No person subject to subsection (a) shall construct or operate any new source subject to this section without registering the new source with the commissioner.

(c) The registrant shall submit an application in accordance with this rule to the commissioner. The application shall include the following information:

(1) Company name and address.

(2) Descriptive information as follows:

(A) A description of the nature and location of the proposed construction or modification.

(B) The design capacity and typical operating schedule of the proposed construction or modification.

(C) A description of the source and the emissions unit or units comprising the source.

(D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction or modification of the source.

(4) Information on the nature and amount of pollutants to be emitted and any other information determined by the commissioner as necessary to demonstrate compliance with the ambient air quality standards.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable state air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) Upon receipt of the information requested, the commissioner shall make a final determination within the time period described under 326 IAC 2-1.1-8.

(e) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9.

(f) A registration issued by the commissioner shall include terms and conditions that include all of the following:

(1) Identification of any and all applicable requirements.

(2) A physical description of the emissions unit or units and operating information consistent with the application information.

(3) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the registration.

(4) An approval to operate in accordance with 326 IAC 2-5.5.

(g) A registration issued by the commissioner may include terms and conditions that require monitoring, record keeping, and reporting as

necessary to assure compliance with all applicable requirements.

(h) The issuance of a registration shall not be subject to the public notice requirements under 326 IAC 2-1.1-6, but the commissioner shall provide for public notice pursuant to IC 4-21.5-3-4.

(i) The commissioner shall not issue a registration that limits a source's potential to emit. *(Air Pollution Control Board; 326 IAC 2-5.1-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1008)*

SECTION 3. 326 IAC 2-5.5-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The following shall be exempt from the requirements of this rule:
(1) Existing sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or are not specifically required to obtain a registration under this rule.
(2) Existing sources operating pursuant to one (1) of the following:
(A) A Part 70 permit under 326 IAC 2-7.
(B) A federally enforceable state operating permit (FESOP) under 326 IAC 2-8.
(C) A source specific operating agreement under 326 IAC 2-9.
(D) A permit by rule under 326 IAC 2-10.
(E) A permit by rule under 326 IAC 2-11.
(F) A minor source operating permit under 326 IAC 2-6.1.

(b) On and after the effective date of this rule, this rule applies to the following existing sources:
(1) Sources with a potential to emit within the following ranges:
(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).
(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:
(i) Sulfur dioxide (SO_2).
(ii) Nitrogen oxides (NO_x).
(C) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of volatile organic compounds (VOC) for sources that are not described in clause (D).
(D) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for sources that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.
(E) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).
(F) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).
(G) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:
(i) Hydrogen sulfide (H_2S).
(ii) Total reduced sulfur (TRS).
(iii) Reduced sulfur compounds.
(iv) Fluorides.
(2) Any existing source that:
(A) is subject to 326 IAC 20-8; and
(B) consists of only decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent.

(c) No person subject to subsection (b) shall operate an existing source subject to this rule without registering the source with the commissioner. *(Air Pollution Control Board; 326 IAC 2-5.5-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012)*

SECTION 4. 326 IAC 2-5.5-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-2 Compliance schedule
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Any chrome electroplating source that meets the applicability criteria under section 1(b)(2) of this rule shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(b) Any existing source not described by subsection (a) that has a valid air registration shall apply for approval under this rule no later than twenty-four (24) months from the effective date of this rule.

(c) Any existing source not described by subsection (a) that does not have a valid air registration shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule. *(Air Pollution Control Board; 326 IAC 2-5.5-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012)*

SECTION 5. 326 IAC 2-5.5-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-3 Application requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-4-9; IC 13-17

Sec. 3. (a) Any person required to prepare an application under section 1(b) of this rule shall prepare and submit a permit application to the commissioner in accordance with this section.

(b) The application shall include the following information:
(1) Company name and address.
(2) Descriptive information as follows:
(A) A description of the nature and location of the proposed construction or modification.
(B) The design capacity and typical operating schedule of the proposed construction or modification.
(C) A description of the source and the emissions unit or units comprising the source.
(D) A description of any emission control equipment, including design specifications.
(3) A schedule for construction or modification of the source.
(4) Information on the nature and amount of pollutants to be emitted and any other information determined by the commissioner as necessary to demonstrate compliance with the ambient air quality standards.
(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applica-

ble state air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(c) Upon receipt of the information requested, the commissioner shall make a final determination within the time period described under 326 IAC 2-1.1-8.

(d) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9. *(Air Pollution Control Board; 326 IAC 2-5.5-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012)*

SECTION 6. 326 IAC 2-5.5-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-4 Registration content

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. (a) A registration issued by the commissioner shall include terms and conditions that include all of the following:

(1) Identification of any and all applicable requirements.

(2) A physical description of the emissions unit or units and operating information consistent with the application information.

(3) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the registration.

(b) A registration issued by the commissioner may include terms and conditions that require monitoring, record keeping, and reporting as necessary to assure compliance with all applicable requirements.

(c) The commissioner shall not issue a registration that limits a source's potential to emit. *(Air Pollution Control Board; 326 IAC 2-5.5-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013)*

SECTION 7. 326 IAC 2-5.5-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-5 Public notice

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 4-21.5-3-4; IC 13-15; IC 13-17

Sec. 5. The issuance of a registration shall not be subject to the public notice requirements under 326 IAC 2-1.1-6, but the commissioner shall provide for public notice pursuant to IC 4-21.5-3-4. *(Air Pollution Control Board; 326 IAC 2-5.5-5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013)*

SECTION 8. 326 IAC 2-5.5-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-6 Source modification

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 6. (a) Any person proposing to construct new emissions units, modify existing emissions units, or otherwise modify the source as described in this section shall submit an application or notification in accordance with this rule.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or registration revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or registration revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application or notification required under this section shall contain the following:

(1) The information required under section 3(b) of this rule.

(2) Identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements as appropriate.

(d) Notwithstanding the public participation requirements under 326 IAC 2-1.1-6, the following changes shall be designated as notice-only changes and shall not require public notice or prior approval by the commissioner:

(1) Changes correcting typographical errors.

(2) Minor administrative changes such as a change in the name, address, or telephone number of any person identified in a permit or a change in descriptive information concerning the source or emissions unit or units.

(3) Changes in ownership or operational control of a source.

(4) Modifications that would require more frequent monitoring or reporting.

(5) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-5.1-3(a) or a significant change in the method or methods to demonstrate or monitor compliance.

(6) Incorporation of newly applicable requirements as a result of a change in applicability.

(7) Incorporation of alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60, 40 CFR 61, or 40 CFR 63*.

(8) Incorporation of newly-applicable monitoring or testing

requirements specified in 40 CFR 60, 40 CFR 61, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.

(9) Incorporation of test methods or monitoring requirements specified in an applicable requirement that the source may use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.

(10) Modifications that have the potential to emit greater than or equal to one (1) ton per year but less than ten (10) tons per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or greater than or equal to two and one-half (2.5) tons per year but less than twenty-five (25) tons per year of any combination of HAPs unless the modification would increase the potential to emit of the source above ten (10) tons per year of a single HAP or twenty-five (25) tons per year of any combination of HAPs.

(11) A modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless:

(A) the modification results in the replacement or repair of an entire process;

(B) the modification qualifies as a reconstruction of an entire process; or

(C) the modification may result in an increase of actual emissions.

(12) Modifications that consist of emission units described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31).

(e) Any person proposing to make a change or modification described in subsection (d) shall submit a notification concerning the change or modification within thirty (30) days of making the change or modification and shall include the information required under section 3(b) of this rule. The notification shall be sent by one (1) of the following means:

(1) Certified mail.

(2) Delivery by hand or express service.

(3) Transmission by other equally reliable means of notification by the source to the commissioner.

(f) The commissioner shall revise the registration consistent with the following:

(1) The commissioner shall revise the registration within thirty (30) days of receipt of the notification.

(2) The commissioner shall send a copy of the revised registration to the registrant.

(3) The registrant may implement the change or modification upon submittal of the notification.

(g) Any person proposing to make a change or modification not described in subsection (d) shall submit an application concerning the change or modification prior to making the change or modification and shall include the information under subsection (c).

(h) An application submitted in accordance with subsection (g) shall be processed as follows:

(1) Within forty-five (45) days from receipt of an application for a minor permit revision, the commissioner shall do one (1) of the following:

(A) Approve the modification request and issue a revised registration incorporating the modification.

(B) Determine that the change or modification will increase the potential to emit of the source to a level that would require an operating permit under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(C) Deny the modification request.

(2) If after review of the application, the commissioner determines that the change or modification will increase the potential to emit of the source to a level that would require an operating permit under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the commissioner shall:

(A) notify the source of the requirement to obtain an operating permit;

(B) provide the source with the appropriate permit application forms; and

(C) issue or deny the operating permit pursuant to the requirements in 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, whichever is applicable.

(Air Pollution Control Board; 326 IAC 2-5.5-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106)

SECTION 9. 326 IAC 2-6.1-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-1 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. The following shall be exempt from the requirements of this rule:

(1) Existing sources or modifications to existing sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or are not specifically required to obtain a permit under this rule shall be exempt from the requirements of this rule.

(2) Existing sources operating pursuant to one (1) of the following:

(A) A Part 70 permit under 326 IAC 2-7.

(B) A federally enforceable state operating permit (FESOP) under 326 IAC 2-8.

(C) A source specific operating agreement under 326 IAC 2-9.

(D) A permit by rule under 326 IAC 2-10.

(E) A permit by rule under 326 IAC 2-11.

(Air Pollution Control Board; 326 IAC 2-6.1-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015)

SECTION 10. 326 IAC 2-6.1-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-2 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 2. Except for sources required to have a Part 70 permit as described in 326 IAC 2-7-2, sources in existence prior to December 25, 1998, and meeting any of the applicability criteria under 326 IAC 2-5.1-3(a) shall apply for an air operating permit as described in this rule.
(Air Pollution Control Board; 326 IAC 2-6.1-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572)

SECTION 11. 326 IAC 2-6.1-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-3 Compliance schedule

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. (a) Any chrome electroplating source that meets the applicability criteria under 326 IAC 2-5.1-3 or medical waste incinerator subject to 40 CFR 60, Subpart Ce*, shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(b) Any existing source not described by subsection (a) that has a valid air operating permit must apply for approval under this rule no later than ninety (90) days prior to the expiration date of that permit, except for the following:

(1) A source subject to the Part 70 Operating Permit Program under 326 IAC 2-7.

(2) A source subject to the FESOP program under 326 IAC 2-8.

(3) A source subject to source specific operating agreement requirements under 326 IAC 2-9.

(4) A source subject to the requirements under 326 IAC 2-10 or 326 IAC 2-11.

(c) Any existing source not described by subsection (a) that does not have a valid air operating permit shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(d) Submittal of a complete Part 70 operating permit application under 326 IAC 2-7-3 and 326 IAC 2-7-4, whether before or after the effective date of this rule, shall satisfy the requirements of this rule.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-6.1-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed May 21, 2002, 10:20 a.m.: 25 IR 3062)*

SECTION 12. 326 IAC 2-6.1-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-4 Application requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-4-9; IC 13-17

Sec. 4. (a) At a minimum, an application for a permit or permit revision shall include the following information:

(1) The company name and address.

(2) The following descriptive information:

(A) A description of the nature and location of the proposed construction or modification.

(B) The design capacity and typical operating schedule of the proposed construction or modification.

(C) A description of the source and the emissions unit or units comprising the source.

(D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction or modification of the source or emissions unit.

(4) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:

(A) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutant.

(B) Estimates of offset credits as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.

(C) Monitoring, testing, reporting, and record keeping requirements.

(D) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(b) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) calendar days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) calendar days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9. *(Air Pollution Control Board; 326 IAC 2-6.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106)*

SECTION 13. 326 IAC 2-6.1-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-5 Operating permit content

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. (a) Permits or permit revisions issued under this rule shall contain the following:

(1) Emission limitations for any source or emissions unit that assure:

(A) the ambient air quality standards set forth in 326 IAC 1-3 will be attained or maintained, or both;

(B) the applicable prevention of significant deterioration maximum allowable increases set forth in 326 IAC 2-2 will be maintained;

(C) the public health will be protected; and

(D) compliance with the requirements of this title and the requirements of the CAA will be maintained.

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with 326 IAC 3 and other applicable regulations.

(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under section 6 of this rule and the procedures under this rule.

(4) A requirement that upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following at a reasonable time of day and in accordance with safety requirements:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records required by a permit term or condition are kept.

(B) Have access to and copy any records that must be kept under this title or the conditions of a permit or operating permit revision.

(C) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment), or practices regulated or required under a permit or operating permit revision.

(D) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement as authorized by the CAA and this title.

(E) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under 326 IAC 17.1.

(5) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit or registration. The commissioner may request that the source provide an identification of all emission units that have been installed that are described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31) with the annual notification.

(b) An operating permit issued under this rule may include terms and conditions that, notwithstanding the permit modification or revision requirements under section 6 of this rule, allow the source to make modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

(1) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(2) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(c) The commissioner shall not issue a minor source operating permit that includes terms and conditions that limit the potential to emit of the source to below emission thresholds for a Part 70 permit. *(Air Pollution Control Board; 326 IAC 2-6.1-5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1016; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572)*

SECTION 14. 326 IAC 2-6.1-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-6 Permit revisions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 6. (a) Any person proposing to construct new emission units, modify existing emission units, or otherwise modify the source as described in this section shall submit an application or notification for a permit revision in accordance with this rule.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application or notification required under this section shall contain the following information:

(1) The company name and address.

(2) A description of the change and the emissions resulting from the change.

(3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(4) A schedule of compliance, if applicable.

(5) Each application or notification shall be signed by an authorized individual whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be modified and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall also constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) Notwithstanding the public participation requirements under 326 IAC 2-1.1-6, the following changes shall be designated as notice-only changes and shall not require public notice or prior approval by the commissioner:

(1) Changes correcting typographical errors.

(2) Minor administrative changes such as a change in the name, address, or telephone number of any person identified in a permit or a change in descriptive information concerning the source or emissions unit or units.

(3) Changes in ownership or operational control of a source.

(4) Modifications that would require more frequent monitoring or reporting.

(5) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-1.1-3(d)(1) or a significant change

in the method or methods to demonstrate or monitor compliance.
(6) Incorporation of newly applicable requirements as a result of a change in applicability.
(7) Incorporation of alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60*, 40 CFR 61*, or 40 CFR 63*.
(8) Incorporation of newly-applicable monitoring or testing requirements specified in 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.
(9) Incorporation of test methods or monitoring requirements specified in an applicable requirement that the source may use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.
(10) Modifications that have the potential to emit greater than or equal to one (1) ton per year but less than ten (10) tons per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or greater than or equal to two and one-half (2.5) tons per year but less than twenty-five (25) tons per year of any combination of HAPs.
(11) A modification that meets the applicability criteria and can meet and will comply with the operational limitations for a source specific operating agreement under 326 IAC 2-9 or a general permit under 326 IAC 2-12.
(12) A modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:
(A) results in the replacement or repair of an entire process;
(B) qualifies as a reconstruction of an entire process; or
(C) may result in an increase of actual emissions.
(13) A modification that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.
(14) A modification that is subject to the following reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*:
(A) 40 CFR 60.40c*, except for modifications to a source located in Lake County.
(B) 40 CFR 60.110b*.
(C) 40 CFR 60.250*, except for modifications that include thermal dryers.
(D) 40 CFR 60.330* for modifications that only include emergency generators.
(E) 40 CFR 60.670*.
(F) 40 CFR 61.110*.
As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP. For modifications under clauses (A) through (D), the source must use the monitoring specified in the relevant RACT, NSPS, or NESHAP.
(15) A modification that is subject to the following new source performance standards (NSPSs), except for modifications that would be subject to 326 IAC 8-1-6:
(A) 40 CFR 60.310*.
(B) 40 CFR 60.390*.
(C) 40 CFR 60.430*.
(D) 40 CFR 60.440*.
(E) 40 CFR 60.450*.
(F) 40 CFR 60.460*.
(G) 40 CFR 60.490*.
(H) 40 CFR 60.540*.
(I) 40 CFR 60.560*.
(J) 40 CFR 60.580*.
(K) 40 CFR 60.600*.
(L) 40 CFR 60.660*.
(M) 40 CFR 60.720*.
As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the NSPS. For modifications under clauses (A) through (H), the source must use the monitoring specified in the NSPS.

(e) Any person proposing to make a change or modification described in subsection (d) shall submit a notification concerning the change or modification within thirty (30) calendar days of making the change or modification and shall include the information required under subsection (c). The notification shall be sent by one (1) of the following means:
(1) Certified mail.
(2) Delivery by hand or express service.
(3) Transmission by other equally reliable means of notification by the source to the commissioner.

(f) The commissioner shall revise the permit within thirty (30) days of receipt of the notification. The commissioner shall provide the permittee with a copy of the revised permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(g) The following modifications shall require minor permit revisions and shall require approval prior to construction and operation:
(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.
(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.
(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not increase the potential to emit any regulated pollutant greater than the thresholds under subdivision (4), but requires a significant change in the method or methods to demonstrate or monitor compliance.
(4) Modifications that would have a potential to emit within the following ranges:
(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).
(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:
(i) Sulfur dioxide (SO_2).
(ii) Nitrogen oxides (NO_x).
(iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).
(C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution

control equipment to comply with the applicable provisions of 326 IAC 8.

(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(5) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

(A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.

(B) Limiting annual hours of operation of the process or business.

(C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

(6) A modification that is not described under subsection (d)(14) or (d)(15) and is subject to a RACT, a NSPS, or a NESHAP, and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(7) A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

(h) Minor permit revision procedures are as follows:

(1) Any person proposing to make a modification described in subsection (g) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall do one (1) of the following:

(A) Approve the minor permit revision request.

(B) Deny the minor permit revision request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (i), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.

(4) The permit shall be revised by incorporating the minor permit revision into the permit. The commissioner shall make all changes necessary to assure compliance with this title and the CAA prior to attaching the amendment to the permit. The commissioner shall notify the source upon attachment of the minor permit revision to the permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(i) Significant permit revision procedures are as follows:

(1) Significant permit revisions are those changes that are not subject to subsection (d) or (g) and include the following:

(A) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(B) Any modification that results in the source needing to obtain a FESOP under 326 IAC 2-8 or a Part 70 permit under 326 IAC 2-7.

(C) A modification that is subject to 326 IAC 8-1-6.

(D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:

(i) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(ii) Sulfur dioxide (SO_2).

(iii) Nitrogen oxides (NO_x).

(iv) Volatile organic compounds (VOC).

(v) Hydrogen sulfide (H_2S).

(vi) Total reduced sulfur (TRS).

(vii) Reduced sulfur compounds.

(viii) Fluorides.

(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(H) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(I) Modifications involving a pollution control project as defined in 326 IAC 2-1.1-1 that result in an increase in the potential to emit any regulated pollutant greater than the thresholds under this section and require a significant change in the method or methods to demonstrate or monitor compliance.

(J) Modifications involving a pollution prevention project as defined in 326 IAC 2-1.1-1 that increase the potential to emit any regulated pollutant greater than the thresholds under this section.

(2) The following shall apply to significant permit revisions:

(A) Any person proposing to make a modification described in

subdivision (1) shall submit an application concerning the modification and shall include the information under subsection (c).

(B) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.

(C) The commissioner shall provide for public notice and comment in accordance with 326 IAC 2-1.1-6.

(D) The commissioner shall approve or deny the significant permit revision as follows:

(i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).

(ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).

(E) The permit shall be revised by incorporating the significant permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-6.1-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1017; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3062)*

SECTION 15. 326 IAC 2-6.1-7 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-7 Operating permit renewal

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 7. (a) An operating permit shall be valid for a period of time not to exceed five (5) years. However, permits may be valid for any lesser period if determined necessary for administrative reasons by the commissioner.

(b) At least ninety (90) calendar days prior to the expiration date of an operating permit, the applicant shall apply for a new operating permit from the commissioner if the applicant wishes to continue operation of the source. If a timely and sufficient application for renewal has been made, the existing permit does not expire until a final decision on the application for renewal has been made by the department.

(c) The application for the operating permit renewal shall include the following information:

(1) Certification that the source has not changed from the initial permit issuance or that all modifications to the source have been reviewed and approved in accordance with this rule.

(2) Identification of any changes to the source that are subject to this article that have not received approval prior to construction or operation.

(Air Pollution Control Board; 326 IAC 2-6.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1020)

SECTION 16. 326 IAC 2-9-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-1 General provisions

Authority: IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-14-8

Sec. 1. (a) The definitions provided in IC 13-11-2, 326 IAC 1-2, 326 IAC 2-7, and 326 IAC 2-8 apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-6.1 unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7. Until the commissioner has issued an operating agreement for a source that would otherwise be subject to 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the source is subject to all applicable requirements of those rules. A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(c) The owner or operator of a source seeking an operating agreement shall submit a request to the commissioner. The request shall include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

(1) Identifying information.

(2) Description of the nature, location, design capacity, and typical operating schedule of the source.

(3) Description of the nature and amount of regulated pollutants emitted in the prior twelve (12) months.

(4) Description of how the source will comply with the applicable restrictions and conditions specified in this rule.

(5) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request shall be signed by a responsible official who shall certify that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule shall be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement shall specify the source specific restrictions and conditions applicable to the source and shall also establish specific monitoring and reporting requirements. Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice shall be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in such a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall

obtain the appropriate approval from the commissioner under 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-4.1, 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, and 326 IAC 2-8.

(f) Any records required to be kept by a source in accordance with any section of this rule shall be maintained at the site for at least five (5) years and shall be made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may combine up to four (4) applications. The one-time application fee for a combined application submittal shall be five hundred dollars ($500).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report shall include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. If an exceedance is the result of a malfunction, then the provisions of 326 IAC 1-6 apply.

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Noncompliance with any applicable provision of this rule or any requirement contained in a source's operating agreement may result in the revocation of the operating agreement and make a source subject to the applicable requirements of a major source. *(Air Pollution Control Board; 326 IAC 2-9-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1059; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108)*

SECTION 17. 326 IAC 2-9-2.5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-2.5 Industrial or commercial surface coating operations not subject to 326 IAC 8-2; graphic arts operations not subject to 326 IAC 8-5-5

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2.5. (a) As used in this section, "solvent containing material" means any product used in surface coating or graphic arts operations that contains volatile organic compounds (VOC) or hazardous air pollutants (HAP), including, but not limited to, the following:

(1) Coatings.
(2) Inks.
(3) Thinners.
(4) Degreasing solvents.
(5) Clean-up solvents.
(6) Other additives.

(b) Except if it is a modification of a major source in Lake or Porter County subject to 326 IAC 2-3-3, any industrial or commercial surface coating operation not subject to the requirements of 326 IAC 8-2 or graphic arts operation not subject to the requirements of 326 IAC 8-5-5 may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(2) One (1) of the following:
  (A) All surface coating or graphic arts operations at the source shall use two thousand (2,000) gallons or less of solvent containing material for every twelve (12) month period.
  (B) The total amount of VOC and HAP delivered to all surface coating or graphic arts operations at the source shall not exceed the following:
    (i) The total amount of VOC shall not exceed two (2) tons per month.
    (ii) The total amount of a single HAP shall not exceed eight hundred thirty-three (833) pounds per month.
    (iii) The total amount of any combination of HAP shall not exceed one (1) ton per month.
(3) For surface coating or graphic arts operations complying with subdivision (2)(A), the following records shall be kept at the source:
  (A) Purchase orders or invoices of solvent containing materials.
  (B) An annual summation on a calendar year basis of purchase orders or invoices for all solvent containing materials.
(4) For surface coating or graphic arts operations complying with subdivision (2)(B), the following records shall be kept at the source:
  (A) Number of gallons of each solvent containing material used.
  (B) VOC and HAP content (pounds/gallon) of each solvent containing material used.
  (C) Material safety data sheets (MSDS) for each solvent containing material used.
  (D) Monthly summation of VOC and HAP usage.
  (E) Purchase orders and invoices for each solvent containing material used.
(5) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.
(6) The annual notice required by section 1(d) of this rule shall include an inventory listing monthly VOC and HAP totals and total VOC and HAP emissions for the previous twelve (12) months.

(Air Pollution Control Board; 326 IAC 2-9-2.5; filed May 7, 1997, 4:00 p.m.: 20 IR 2305)

SECTION 18. 326 IAC 2-9-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-3 Surface coating or graphic arts operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. Any industrial or commercial surface coating operation or graphic arts operation may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(2) The total amount of VOC and HAP delivered to all surface coating or graphic arts operations at the source shall not exceed the

following:

(A) Fifteen (15) pounds per day from surface coating or graphic arts operations at sources located outside of Lake and Porter Counties.

(B) Seven (7) pounds per day from surface coating or graphic arts operations at sources located in Lake and Porter Counties.

(3) For surface coating or graphic arts operations complying with subdivision (2), the following records shall be kept at the source:

(A) Number of gallons of each solvent containing material used.

(B) VOC and HAP content (pounds/gallon) of each solvent containing material used.

(C) Material safety data sheets (MSDS) for all VOC and HAP containing material used.

(D) Monthly summation of VOC and HAP usage.

(E) Purchase orders and invoices for each solvent containing material used.

(4) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.

(5) The annual notice required by section 1(d) of this rule shall include an inventory listing monthly VOC totals and total VOC emissions for the previous twelve (12) months.

(Air Pollution Control Board; 326 IAC 2-9-3; filed May 7, 1997, 4:00 p.m.: 20 IR 2305)

SECTION 19. 326 IAC 2-9-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-4 Woodworking operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any woodworking operation subject to 326 IAC 6-1 or 326 IAC 6-3 may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the conditions under subsection (b), (c), (d), (e), or (f).

(b) Unless the operations meet the conditions of subsection (c), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).

(2) The source shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) in excess of one-thousandth (0.001) grain per actual cubic foot.

(3) The source shall discharge no visible emissions to the outside air from the woodworking operation.

(4) The source shall not at any time exhaust to the atmosphere greater than four hundred thousand (400,000) actual cubic feet per minute.

(5) The source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.

(c) Unless the operations meet the conditions of subsection (b), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) The baghouse does not exhaust to the atmosphere greater than one hundred twenty-five thousand (125,000) cubic feet per minute.

(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of three-thousandths (0.003) grain per dry standard cubic feet of outlet air.

(4) Opacity from the baghouse does not exceed ten percent (10%) opacity.

(5) The baghouse is in operation at all times that the woodworking equipment is in use.

(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(7) The baghouse is inspected quarterly when vented to the atmosphere.

(8) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(d) Unless the operations meet the conditions of subsection (b), (c), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) The baghouse does not exhaust to the atmosphere greater than forty thousand (40,000) cubic feet per minute.

(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of one-hundredth (0.01) grain per dry standard cubic feet of outlet air.

(4) Opacity from the baghouse does not exceed ten percent (10%).

(5) The baghouse is in operation at all times that the woodworking equipment is in use.

(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(7) The baghouse is inspected quarterly when vented to the atmosphere.

(8) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(e) Unless the operations meet the conditions of subsection (b), (c), (d), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five

hundred dollars ($500).
(3) The baghouse shall not exhaust greater than one hundred twenty-five thousand (125,000) cubic feet per minute to the atmosphere.
(4) The baghouse shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(5) Opacity from the baghouse does not exceed ten percent (10%).
(6) The baghouse is in operation at all times that the woodworking equipment is in use.
(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(A) The baghouse shall be inspected.
(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.
(8) The baghouse is inspected quarterly when vented to the atmosphere.
(9) The owner or operator keeps the following records:
(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(B) Quarterly inspection reports when vented to the atmosphere.
(C) Visible observation reports.
(D) Records of corrective actions.

(f) Unless the operations meet the conditions of subsection (b), (c), (d), or (e), woodworking operations shall meet the following conditions:
(1) The woodworking operations shall be controlled by a baghouse.
(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(3) The baghouse shall not exhaust greater than sixty-five thousand (65,000) cubic feet per minute to the atmosphere.
(4) The baghouse shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(5) Opacity from the baghouse does not exceed ten percent (10%).
(6) The baghouse is in operation at all times that the woodworking equipment is in use.
(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(A) The baghouse shall be inspected.
(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.
(8) The baghouse is inspected quarterly when vented to the atmosphere.
(9) The owner or operator keeps the following records:
(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(B) Quarterly inspection reports when vented to the atmosphere.
(C) Visible observation reports.
(D) Records of corrective actions.

(g) The requirement to submit the five hundred dollar ($500) application fee shall not apply to a source that has been issued an operating agreement under this section.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-4; filed May 7, 1997, 4:00 p.m.: 20 IR 2306; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1060; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; filed May 21, 2002, 10:20 a.m.: 25 IR 3075)*

SECTION 20. 326 IAC 2-9-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-5 Abrasive cleaning operations
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. Any industrial or commercial source of abrasive cleaning operations may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following:
(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(2) All abrasive cleaning operations shall be totally enclosed.
(3) Emissions of particulate matter shall not exceed one-hundredth (0.01) grain per actual cubic foot per minute.
(4) Air flow shall not exceed forty thousand (40,000) actual cubic feet per minute.
(5) The source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.
(Air Pollution Control Board; 326 IAC 2-9-5; filed May 7, 1997, 4:00 p.m.: 20 IR 2306)

SECTION 21. 326 IAC 2-9-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-6 Grain elevators
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 6. Any grain elevator subject to 326 IAC 2-6.1, 326 IAC 2-7, and 326 IAC 2-8 may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions:
(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(2) Grain elevators with storage capacity less than or equal to one million (1,000,000) U.S. bushels that contain receiving, shipping, or grain storage facilities; headhouse, gallery belt, or tripper belt operations; or grain cleaning or grain drying equipment shall comply with the following:
(A) Grain elevators shall not receive or ship more than three million (3,000,000) U.S. bushels of grain annually.
(B) Each source shall maintain records of the type and amount of grain received and shipped on an annual basis.
(3) Grain elevators with storage capacity greater than one million (1,000,000) U.S. bushels of grain but no more than two million five hundred thousand (2,500,000) U.S. bushels that contain receiving, shipping, or grain storage facilities; headhouse, gallery belt, or tripper belt operations; or grain cleaning or grain drying equipment

shall comply with the following provisions:

(A) Grain elevators shall not receive or ship more than ten million (10,000,000) U.S. bushels of grain annually.

(B) Each source shall limit particulate matter emissions through the application of mineral oil or soybean oil to all grain after it is received at an application rate of three-hundredths percent (0.03%) by weight or greater.

(C) Each source shall maintain the following records on a monthly basis:

(i) Type and amount of grain received and shipped.

(ii) Amount of mineral oil or soybean oil used and the rate of application.

(iii) Purchase orders and invoices for mineral oil or soybean oil.

(Air Pollution Control Board; 326 IAC 2-9-6; filed May 7, 1997, 4:00 p.m.: 20 IR 2306; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1062)

SECTION 22. 326 IAC 2-9-7, PROPOSED TO BE AMENDED AT 26 IR 2009, SECTION 13, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-7 Sand and gravel plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 7. (a) The following definitions apply throughout this section:

(1) "Annual throughput" means the amount of material that is being processed through the plant on a calendar year basis.

(2) "Sand and gravel" means any unconsolidated mixture of fine or coarse aggregate, or both, found in and processed from a natural deposit.

(3) "Surfactant" means any chemical additive that reduces the surface tension of water.

(4) "Wet process in a pit and quarry operation" means the operation in which the aggregate deposit being processed has:

(A) been mined from beneath bodies of water, such as rivers, estuaries, lakes, or oceans; or

(B) a free moisture content of one and five-tenths percent (1.5%) by weight or greater.

The aggregate infeed that undergoes such process shall maintain a minimum of one and five-tenths percent (1.5%) by weight throughout the production process.

(5) "Wet suppression systems" means dust control devices in a pit and quarry operation that use a pressurized liquid, either water or water with a small amount of surfactant, for the controlled reduction or elimination of airborne dust or the suppression of such dust at its source.

(b) Any sand and gravel plant may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions, outlined under subdivisions (1) through (4), as applicable, and subdivision (5):

(1) Sand and gravel plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, including fugitive particulate emissions, utilizing at most five (5) crushers, ten (10) screens, and a conveying operation shall limit the annual throughput to less than four hundred ten thousand (410,000) tons per year.

(2) Sand and gravel plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, excluding fugitive particulate emissions utilizing at most nine (9) crushers, twenty (20) screens, and a conveying operation shall limit the annual throughput to less than one million (1,000,000) tons per year.

(3) Sand and gravel plants that do not emit particulate matter in excess of or equal to one hundred (100) tons per year, excluding fugitive particulate emissions, utilizing at most twelve (12) crushers, twenty-four (24) screens, and a conveying operation shall limit the annual throughput to less than three million one hundred thousand (3,100,000) tons per year.

(4) Sand and gravel plants that meet the specific restrictions and conditions in subdivision (1), (2), or (3) shall also comply with the following provisions:

(A) Each source described by subdivisions (1) through (2) shall maintain annual throughput records at the site on a calendar year basis.

(B) Each source described by subdivision (3) shall maintain at the site throughput records for the previous twelve (12) months on a monthly rolling total.

(C) A wet process or continuous wet suppressions shall be used.

(D) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained at all times of plant operation in such a manner as to meet the requirements of this rule.

(E) Visible emissions from the screening and conveying operations shall not exceed an average of ten percent (10%) opacity in twenty-four (24) consecutive readings in a six (6) minute period, and visible emissions from the crushing operation shall not exceed an average of fifteen percent (15%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with these limitations shall be determined by 40 CFR 60, Appendix A, Method 9*.

(F) Fugitive particulate emissions shall be controlled by applying water on storage piles and unpaved roadways on an as needed basis, such that the following visible emission conditions are met:

(i) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(ii) Visible emissions from unpaved roadways shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

(AA) The first shall be taken at the time of emission generation.

(BB) The second shall be taken five (5) seconds after the first.

(CC) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(G) Fugitive particulate emissions at a sand and gravel plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located pursuant

to 326 IAC 6-4.

(H) The source shall comply with 40 CFR 60.670, Standards of Performance for Nonmetallic Mineral Processing Plants*, if applicable.

(5) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-7; filed May 7, 1997, 4:00 p.m.: 20 IR 2307; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566)*

SECTION 23. 326 IAC 2-9-8, PROPOSED TO BE AMENDED AT 26 IR 2010, SECTION 14, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-8 Crushed stone processing plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 8. (a) The following definitions apply throughout this section:

(1) "Annual throughput" means the amount of material that is being processed through the plant in a calendar year.

(2) "Crushed stone" means any composition of limestone, granite, traprock, or any other hard, sound rock that is produced by blasting and then crushing.

(3) "Wet process in a pit and quarry operation" means the operation in which the aggregate deposit being processed has:

(A) been mined from beneath bodies of water, such as rivers, estuaries, lakes, or oceans; or

(B) a free moisture content of one and five-tenths percent (1.5%) by weight or greater.

The aggregate infeed that undergoes such process shall maintain a minimum of one and five-tenths percent (1.5%) by weight throughout the production process.

(4) "Wet suppression systems" means dust control devices in a pit and quarry operation that use a pressurized liquid, either water or water with a small amount of surfactant, for the controlled reduction or elimination of airborne dust or the suppression of such dust at its source.

(b) Any crushed stone processing plant may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions, outlined under subdivisions (1) through (4), as applicable, and subdivision (5):

(1) Crushed stone processing plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, including fugitive particulate emissions, utilizing at most four (4) crushers, seven (7) screens, and a conveying operation shall limit the annual throughput to less than four hundred thousand (400,000) tons per year.

(2) Crushed stone processing plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons, excluding fugitive particulate emissions, utilizing at most six (6) crushers, thirteen (13) screens, and a conveying operation shall limit the annual throughput to less than one million (1,000,000) tons per year.

(3) Crushed stone processing plants that do not emit particulate matter in excess of or equal to one hundred (100) tons per year, excluding fugitive particulate emissions, utilizing at most nine (9) crushers, seventeen (17) screens, and a conveying operation shall comply with the following provisions:

(A) The annual throughput shall not exceed three million (3,000,000) tons per year.

(B) Each source under this subdivision shall pay an annual fee of eight hundred dollars ($800).

(4) Crushed stone processing plants that meet the specific restrictions and conditions in subdivision (1), (2), or (3) shall also comply with the following provisions:

(A) Each source described by subdivisions (1) through (2) shall maintain annual throughput records at the site on a calendar year basis.

(B) Each source described by subdivision (3) shall maintain at the site throughput records for the previous twelve (12) months on a monthly rolling total.

(C) The crushing, screening, and conveying operations shall be equipped with dust collectors, unless a wet process or continuous wet suppression system is used, to comply with clause (E).

(D) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained at all times of plant operation in such a manner as to meet the requirements of this rule.

(E) Visible emissions from the screening and conveying operations shall not exceed an average of ten percent (10%) opacity in twenty-four (24) consecutive readings in a six (6) minute period, and visible emissions from the crushing operation shall not exceed an average of fifteen percent (15%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with these limitations shall be determined by 40 CFR 60, Appendix A, Method 9*.

(F) Fugitive particulate emissions shall be controlled by applying water on storage piles and unpaved roadways on an as needed basis such that the following visible emission conditions are met:

(i) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(ii) Visible emissions from unpaved roadways shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

(AA) The first shall be taken at the time of emission generation.

(BB) The second shall be taken five (5) seconds after the first.

(CC) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right

angles to the plume.

(G) Fugitive particulate emissions at a crushed stone plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.

(H) The source shall comply with 40 CFR 60.670, Standards of Performance for Nonmetallic Mineral Processing Plants*, if applicable.

(5) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-8; filed May 7, 1997, 4:00 p.m.: 20 IR 2308; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566)*

SECTION 24. 326 IAC 2-9-9, PROPOSED TO BE AMENDED AT 26 IR 2012, SECTION 15, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-9 Ready-mix concrete batch plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 9. (a) The following definitions apply throughout this section:

(1) "Aggregate" means any combination of sand, gravel, and crushed stone in their natural or processed state.

(2) "Aggregate transfer" means the transfer of material:

(A) from process equipment onto the ground;

(B) from the ground into hauling equipment;

(C) from hauling equipment onto a storage pile;

(D) from a storage pile into hauling equipment for transport; or

(E) into an initial hopper for further process.

(3) "Cement" means a powdered substance manufactured from calcined carbonate rock (burned lime) and clay that, when mixed with water, forms a cohesive and adhesive material that will harden into a rigid mass.

(4) "Concrete" means a construction material consisting of a coarse and fine aggregate bound by a paste of cement and water, which then sets into a hard and compact substance.

(5) "Ready-mix concrete batch plant" means a facility that prepares and distributes made-to-order batches of concrete in bulk or package form.

(b) Any ready-mix concrete batch plant with actual annual emissions of particulate matter (PM) less than twenty-five (25) tons per year, including fugitive particulate emissions, may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions:

(1) Production shall be limited to three hundred thousand (300,000) cubic yards annually.

(2) Each source shall maintain records of annual production at the site on a calendar year basis.

(3) Fugitive particulate emissions from cement and aggregate silos shall be controlled by operating dust collectors, such that visible emissions do not exceed twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with this limitation shall be determined by 40 CFR 60, Appendix A, Method 9*.

(4) Fugitive particulate emissions shall be controlled by applying water on aggregate storage piles, unpaved roadways, and aggregate transfer operations on an as needed basis such that the following visible emission conditions are met:

(A) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(B) Visible emissions from unpaved roads shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

(i) The first shall be taken at the time of emission generation.

(ii) The second shall be taken five (5) seconds after the first.

(iii) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(C) Visible emissions from aggregate transferring operations shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of three (3) opacity readings taken five (5) seconds, ten (10) seconds, and fifteen (15) seconds after the end of one (1) material loading or unloading operation. The three (3) readings shall be taken at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but no more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(5) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained in such a manner as to meet the requirements of this rule.

(6) Cement transferring operations shall always be enclosed.

(7) Each source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.

(8) Fugitive particulate emissions at a ready-mix concrete batch plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.

(9) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor,

100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-9; filed May 7, 1997, 4:00 p.m.: 20 IR 2309; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566)*

SECTION 25. 326 IAC 2-9-10, PROPOSED TO BE AMENDED AT 26 IR 2013, SECTION 16, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-10 Coal mines and coal preparation plants
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 10. (a) The following definitions apply throughout this section:
(1) "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388-88*.
(2) "Coal mine" means an individual excavation site from which coal is removed by surface or underground mining operations.
(3) "Coal preparation plant" means any facility (excluding underground and surface mining operations) that prepares coal by one (1) or more of the following processes:
(A) Breaking.
(B) Crushing.
(C) Screening.
(D) Wet or dry cleaning.
(E) Thermal drying.
(4) "Coal processing and conveying equipment" means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, the following:
(A) Breakers.
(B) Crushers.
(C) Screens.
(D) Conveyor belts.
(5) "Collocated source" means any coal preparation facility and coal mine that are:
(A) located on one (1) piece of property or on contiguous or adjacent properties; and
(B) which are owned or operated by the same person (or by persons under common control).
(6) "Material transfer" means the transfer of material:
(A) from process equipment onto the ground;
(B) from the ground into hauling equipment;
(C) from hauling equipment onto a storage pile;
(D) from a storage pile into hauling equipment for transport; or
(E) into an initial hopper for further processing.
(7) "Refuse" means the portion of mined coal which is rejected by the preparation plant as unsalable.
(8) "Thermal dryer" means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream that is exhausted to the air.

(b) Any coal preparation plant, coal mine, or collocated source may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions:
(1) Coal preparation plants that do not utilize thermal dryers or pneumatic coal cleaning equipment and do not emit particulate matter less than ten microns (PM_{10}) in excess of or equal to one hundred (100) tons per year, including fugitive particulate emissions, shall limit the total annual tons of coal shipped to less than five million (5,000,000) tons per year and must comply with the following:
(A) Each coal preparation plant shall maintain at the site total annual throughput records for the previous twelve (12) months on a monthly rolling total, and records shall be kept for a minimum of five (5) years.
(B) The screening, crushing, and conveying operations at a coal preparation plant shall be enclosed, unless a wet suppression system is used, such that visible emissions shall not exceed an average of twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period using procedures in 40 CFR 60, Appendix A, Method 9**.
(2) Fugitive particulate emissions at a coal preparation plant, coal mine, or collocated source from open storage piles, unpaved roadways, or batch transfer operations shall be controlled by applying water or other approved dust suppressant on an as needed basis such that the following visible emission conditions are met:
(A) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9**, except that the opacity shall be observed at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.
(B) Visible emissions from unpaved roads shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:
(i) The first will be taken at the time of emission generation.
(ii) The second will be taken five (5) seconds after the first.
(iii) The third will be taken five (5) seconds after the second or ten (10) seconds after the first.
The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.
(C) Visible emissions from material transfer operations shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of three (3) opacity readings taken five (5) seconds, ten (10) seconds, and fifteen (15) seconds after the end of one (1) material loading or unloading operation. The three (3) readings shall be taken at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.
(3) All visible emission readings shall be performed by a qualified observer as defined in 326 IAC 1-2-62.
(4) Fugitive particulate emissions at a coal preparation plant, coal mine, or collocated source shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.
(5) The annual notice required by section 1(d) of this rule shall also include the legal description of the source's location.
(6) Each coal preparation plant, coal mine, or collocated source shall pay a one-time application fee of five hundred dollars ($500) and an

annual fee of six hundred dollars ($600).

*This document is incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-10; filed May 7, 1997, 4:00 p.m.: 20 IR 2310; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566)*

SECTION 26. 326 IAC 2-9-11 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-11 Automobile refinishing operations
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 11. (a) The following definitions apply throughout this section:
(1) "Automobile refinishing" is defined at 326 IAC 8-10-2(5).
(2) "Solvent containing material" means any product used in automobile refinishing operations that contains volatile organic compounds (VOC) or hazardous air pollutants (HAP), including, but not limited to, the following:
(A) Pretreatment wash primers.
(B) Precoats.
(C) Primers.
(D) Primer surfacers.
(E) Primer sealers.
(F) Topcoats.
(G) Specialty coatings.
(H) Surface preparation products.
(I) Gun cleaning solutions.
(J) Paint removers.
(K) Degreasing solvents.
(L) Hardeners.
(M) Catalysts.
(N) Reducers.
(O) Other additives.

(b) An owner or operator of an automobile refinishing shop may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:
(1) The requirements of 326 IAC 8-10, if applicable.
(2) One (1) of the following:
(A) The total amount of all solvent containing material delivered to the automobile refinishing shop, less the amount of solvent containing material quantified by manifest as having been shipped off-site, shall not exceed two thousand (2,000) gallons annually.
(B) The total amount of all solvent containing material delivered to the automobile refinishing shop that meets the VOC limits of 326 IAC 8-10-4(b), less the amount of solvent containing material quantified by manifest as having been shipped off-site, shall not exceed three thousand (3,000) gallons annually.
(C) The total amount of VOC delivered to the automobile refinishing shop, less the amount of VOC that is quantified by manifest as having been shipped off-site, shall not exceed one (1) ton per month.
(3) For automobile refinishing shops electing to comply with subdivision (2)(A) or (2)(B), usage shall be determined based on either:
(A) actual use records; or
(B) purchase records.
(4) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.
(5) Request a source specific operating agreement under this section of the rule, which shall be accompanied by a fee of five hundred dollars ($500).

(c) An owner or operator of an automobile refinishing shop that has been issued an operating agreement under this section shall keep the following records at the source:
(1) For automobile refinishing shops complying with subsection (b)(2)(A), the following records shall be kept:
(A) Purchase or use records of solvent containing materials.
(B) An annual summation on a calendar year basis of purchase or use records for all solvent containing materials.
(C) Amount of waste solvent containing material manifested off-site.
(2) For automobile refinishing shops complying with subsection (b)(2)(B), the records required under subdivision (1) and the records required under 326 IAC 8-10-9(a) shall be kept.
(3) For automobile refinishing shops complying with subsection (b)(2)(C), the following records shall be kept:
(A) Purchase orders and invoices for each solvent containing material.
(B) Number of gallons of each solvent containing material used.
(C) VOC content (pounds/gallon) of each solvent containing material used.
(D) Amount of waste VOC manifested off-site.
(E) Summation on a monthly basis of emissions of VOC.
(Air Pollution Control Board; 326 IAC 2-9-11; filed May 7, 1997, 4:00 p.m.: 20 IR 2312)

SECTION 27. 326 IAC 2-9-12 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-12 Degreasing operations
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 12. (a) An owner or operator of a degreasing operation may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:
(1) Request a source specific operating agreement under this section of the rule, which shall be accompanied by a fee of five hundred dollars ($500).
(2) The requirements of 326 IAC 8-3 and 326 IAC 20-6, if applicable.
(3) The total amount of VOC and HAP delivered to degreasing operations at the source, less the amount of VOC and HAP that is quantified by manifest as having been shipped off-site, on an annual rolling average basis as follows:
(A) The total amount of any single HAP from degreasing opera-

tions shall not exceed eight hundred thirty-three (833) pounds per month.

(B) The total amount of any combination of HAP from degreasing operations shall not exceed one (1) ton per month.

(C) The total amount of VOC from degreasing operations at sources located in Lake and Porter Counties shall not exceed one (1) ton per month.

(D) The total amount of VOC from degreasing operations at sources located outside of Lake and Porter Counties shall not exceed two (2) tons per month.

(b) An owner or operator of a degreasing operation that has been issued an operating agreement under this section shall keep the following records at the source:

(1) Purchase records for all degreasing solvents.

(2) Material safety data sheets (MSDS) for all degreasing solvents.

(3) Amount of waste degreasing solvent manifested off-site.

(4) Monthly summation of VOC and HAP emissions for all degreasing solvents.

(Air Pollution Control Board; 326 IAC 2-9-12; filed May 7, 1997, 4:00 p.m.: 20 IR 2313)

SECTION 28. 326 IAC 2-9-13, PROPOSED TO BE AMENDED AT 26 IR 2014, SECTION 17, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-13 External combustion sources

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The following definitions apply throughout this section:

(1) "Boiler" means a device that uses the heat generated from combustion of a fuel or electrical resistance to raise the temperature of water above the boiling point for water at the operating pressure.

(2) "Dryer" means a device that uses the heat generated from combustion of a fuel or electrical resistance to drive off volatile compounds by evaporation from materials processed in such a device.

(3) "Oven" means a device that uses the heat generated from combustion of a fuel or electrical resistance to cause or expedite a chemical curing process or drive off volatile compounds from material processed in such a device.

(4) "Process heater" means a device that uses the heat generated from combustion of a fuel or electrical resistance to heat a material so as to augment or expedite its processing.

(5) "Space heater" means a device that uses the heat generated from combustion of a fuel or electrical resistance to heat the air inside a building or otherwise provide comfort heating.

(6) "Water heater" means a device that uses the heat generated from combustion of a fuel or electrical resistance to raise the temperature of water below the boiling point for water at the operating pressure.

(b) Any external combustion source, including any combination of boilers, space heaters, ovens, dryers, or water heaters may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:

(1) Visible emissions from the source shall not exceed twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*.

(2) One (1) of the following:

(A) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (f), Table 1 for a single fuel or a combination of two (2) fuels.

(B) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (g), Table 2 for a single fuel or a combination of two (2) fuels.

(c) Sources electing to comply with subsection (b)(2)(A) must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or U.S. EPA. No other demonstration of compliance shall be required. A source specific operating agreement is not required for these sources.

(d) Sources electing to comply with subsection (b)(2)(B) must comply with the requirements of section 1 of this rule and submit a request for a source specific operating agreement accompanied by a one-time application fee of five hundred dollars ($500).

(e) For sources complying with subsection (b)(2)(B), the following records shall be kept at the source:

(1) Hours operated for each combustion unit.

(2) Records of annual fuel usage for each combustion unit.

(3) Routine maintenance records.

(f) Table 1 limits shall be as follows:

TABLE 1

Fuel	Maximum Fuel Usage per year
Single Fuel	
Natural gas	1,000.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	714.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	181.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,408.0 kgals
Fuel oil #5 and #6 (distillate)	181.0 kgals
Liquified petroleum gas (LPG)	5,263.0 MMCF
Coal (bituminous and subbituminous)	786.0 tons
Bark-only	5,882.0 tons
Wood-only	7,352.0 tons
Wood and bark	7,352.0 tons
Dual Fuel[1]	
Natural gas	976.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	697.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	177.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	83.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	59.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	15.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,291.0 kgals
Fuel oil #5 and #6 (residual)	15.0 kgals

Coal (bituminous and subbituminous)	786.0 tons
Bark, wood, or wood and bark	490.0 tons
Bark, wood, or wood and bark	5,858.0 tons
Coal (bituminous and subbituminous)	65.0 tons

([1]Top fuel is intended to be the primary fuel; the bottom fuel is the secondary fuel.)
Unit abbreviations:
kgals = 10^3 gallons
MMCF = 10^6 cubic feet

(g) Table 2 limits shall be as follows:

TABLE 2

Fuel	Maximum Fuel Usage per year
Single Fuel	
Natural gas	1,600.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	1,142.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	290.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	2,253.0 kgals
Fuel oil #5 and #6 (residual)	291.0 kgals
Liquified petroleum gas (LPG)	8,421.0 MMCF
Coal (bituminous and subbituminous)	1,258.0 tons
Bark-only	9,411.0 tons
Wood-only	11,764.0 tons
Wood/bark	11,764.0 tons
Dual Fuel[1]	
Natural gas	1,562.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	1,115.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	284.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	133.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	95.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	24.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate fuel)	2,065.0 kgals
Fuel oil #5 and #6 (residual)	24.0 kgals
Coal (bituminous and subbituminous)	1,258.0 tons
Bark, wood, or wood and bark	784.0 tons
Bark, wood, or wood and bark	9,373.0 tons
Coal (bituminous and subbituminous)	104.0 tons

([1]Top fuel is intended to be the primary fuel, the bottom fuel is the secondary fuel.)
Unit abbreviations:
kgals = 10^3 gallons
MMCF = 10^6 cubic feet

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-9-13; filed May 7, 1997, 4:00 p.m.: 20 IR 2313; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566)*

SECTION 29. 326 IAC 2-9-14 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-14 Internal combustion sources

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 14. (a) Any stationary internal combustion source, including any combination of turbines, reciprocating engines, or engines, may elect to comply with this section by complying with section 1 of this rule and one (1) of the following:

(1) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (e), Table 1 for a single fuel or a combination of two (2) fuels.

(2) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (f), Table 2 for a single fuel or a combination of two (2) fuels.

(b) Sources electing to comply with subsection (a)(1) must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or U.S. EPA. No other demonstration of compliance shall be required. A source specific operating agreement is not required for these sources.

(c) Sources electing to comply with subsection (a)(2) must comply with the requirements of section 1 of this rule and submit a request for a source specific operating agreement accompanied by a one-time application fee of five hundred dollars ($500).

(d) For sources complying with subsection (a)(2), the following records shall be kept at the source:

(1) Hours operated for each combustion unit.

(2) Records of annual fuel usage for each combustion unit.

(3) Routine maintenance records.

(e) Table 1 limits shall be as follows:

TABLE 1

Fuel	Maximum Fuel Usage per Year
Large turbine	
Natural gas	227.27 MMCF/yr
Distillate	1,414.42 kgal/yr
Uncontrolled natural gas prime movers	
Gas turbines	294.11 MMCF/yr
2-cycle lean burn	37.03 MMCF/yr
4-cycle lean burn	31.25 MMCF/yr
4-cycle rich burn	43.47 MMCF/yr
Diesel, reciprocating	
<600 HP	165.51 kgal/yr
Gasoline, reciprocating	
<250 HP	12.26 kgal/yr
Diesel, large stationary	235.45 kgal/yr

Unit abbreviations:
kgal = 10^3 gallons
MMCF = 10^6 cubic feet

(f) Table 2 limits shall be as follows:

TABLE 2

Fuel	Maximum Fuel Usage per Year
Large turbine	
Natural gas	363.63 MMCF/yr
Distillate	2,263.07 kgal/yr
Uncontrolled natural gas prime movers	
Gas turbines	470.58 MMCF/yr
2-cycle lean burn	59.25 MMCF/yr
4-cycle lean burn	50.00 MMCF/yr
4-cycle rich burn	69.56 MMCF/yr
Diesel, reciprocating	
<600 HP	264.82 kgal/yr
Gasoline, reciprocating	
<250 HP	19.62 kgal/yr
Diesel, large stationary	376.72 kgal/yr

Unit abbreviations:
kgal = 10^3 gallons
MMCF = 10^6 cubic feet

(Air Pollution Control Board; 326 IAC 2-9-14; filed May 7, 1997, 4:00 p.m.: 20 IR 2315)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2 and IC 13-14-9, notice is hereby given that on ***May 5, 2004*** *at 1:00 p.m. in the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on the readoption of 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9.*

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 new rules and readoption. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 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) 233-0855. (TDD): (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Tenth Floor East, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD
#03-312(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING THE 2003 UPDATE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM AT 329 IAC 3.1

PURPOSE OF NOTICE

On January 1, 2004, the Indiana Department of Environmental Management (IDEM) solicited public comment on new rules and amendments to rules in 329 IAC 3.1 concerning:

- ! incorporating by reference the July 1, 2003, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273, including adopting three (3) recent federal changes to the hazardous waste management program, concerning:
  - " zinc fertilizers made from recycled hazardous secondary materials,
  - " the national treatment variance for radioactively contaminated batteries, and
  - " corrections to the hazardous air pollutants standards for hazardous waste combusters,
- ! updating the incorporation by reference of 40 CFR 146 and the eight (8) appendices to 40 CFR 60 to the latest available editions,
- ! amending 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 to be consistent with federal changes to the recycled used oil management standards published by the U.S. Environmental Protection Agency (EPA) on July 30, 2003,
- ! amending 329 IAC 3.1-6-3 to clarify that chemical munitions listed in that section are acute hazardous wastes,
- ! substituting the Indiana statutory definition of PCB for the definition of PCB and PCBs, and
- ! correcting references to federal certification language and hazardous waste permits in the federal hazardous waste regulations.

Since publishing that notice, we have identified two new issues that must be addressed in a timely manner:

- ! 329 IAC 3.1-12-2(4) contains a provision that is no longer consistent with 40 CFR 268, Subpart C. We are proposing to amend that provision as described in this notice to make Indiana's hazardous waste program consistent with the federal hazardous waste land disposal restrictions in 40 CFR 268. IDEM seeks comment on this proposed amendment to 329 IAC 3.1-12-2 and any other provisions of Title 329 that may be affected by this rulemaking.
- ! IC 13-22-5-12 requires us to have in place, by July 1, 2005, rules to manage loads of hazardous waste that are rejected by a treatment, storage, or disposal facility. On May 22, 2001 (66 FR 28240), the U.S. Environmental Protection Agency (EPA) proposed a hazardous waste manifest modification rule that contained provisions for rejected loads of hazardous waste. At this time it does not appear that EPA will finalize that rule before July 1, 2005. As a result, we are proposing to add requirements for rejected loads of hazardous waste to this rule, as required by IC 13-22-5-12.

IDEM seeks comment on the issues described above, the affected citations listed, and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-1-7; 329 IAC 3.1-6-2; 329 IAC 3.1-6-3; 329 IAC 3.1-7.5; 329 IAC 3.1-12-2; 329 IAC 3.1-13-2; 329 IAC 13-3-1; 329 IAC 13-3-4; 329 IAC 13-9-5.

AUTHORITY: IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2; IC 13-22-5-12; P.L. 231-2003, SECTION 6; 40 U.S.C. §6926; 40 U.S.C. §6929; 40 CFR 271.21.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In this notice we are proposing to add two (2) additional changes to the original First Notice of Comment period published on January 1, 2004, at 27 IR 1387 which would:

(1) amend 329 IAC 3.1-12-2(4) to apply to hazardous wastes identified or listed in both Subpart C and Subpart D; and

(2) add management requirements for loads of hazardous waste that are rejected by a treatment, storage or disposal facility, as required by IC 13-22-5.

We are proposing to amend 329 IAC 3.1-12-2(4) to correct an inaccuracy. This provision was originally adopted to eliminate a date that conflicted with Indiana statutes that prohibit retroactive rulemaking. However, after numerous changes, 40 CFR 268, Subpart C no longer contains a complete list of wastes that are subject to the land disposal restrictions. 40 CFR Subpart D, which contains treatment standards for specific hazardous wastes and universal treatment standards for hazardous waste constituents, was added after 329 IAC 3.1.12-2(4) was adopted. Subpart D applies to more wastes than are identified or listed in Subpart C. As a result, the statement in 329 IAC 3.1-12-2(4) is inaccurate and makes the Indiana land disposal restrictions less stringent than the federal land disposal restrictions.

In addition, we are proposing to add a new 329 IAC 3.1-7.5 to establish rules to manage loads of hazardous waste that are rejected by a hazardous waste treatment, storage or disposal facility, as required by IC 13-22-5-12. The new rules must be in place by July 1, 2005, when the current statute regulating rejected loads expires.

All other information about this rulemaking that was published on January 1, 2004, at 27 IR 1387 remains as noticed.

Alternatives to be Considered Within the Rulemaking

We are considering two (2) additional alternatives in this rulemaking, in addition to the nine (9) alternatives proposed on January 1, 2004.

Alternative 10. Amend 329 IAC 3.1-12-2(4) to apply to wastes identified or listed in both 40 CFR 268, Subpart C and Subpart D. This provision was adopted when 40 CFR 268, Subpart C contained a complete list of wastes subject to land disposal restrictions. After 329 IAC 3.1-12-2(4) was adopted, 40 CFR 268, Subpart D was added. Subpart D applies to more wastes that are subject to the land disposal restrictions than are identified or listed in 40 CFR 268, Subpart C. As a result, the statement in 329 IAC 3.1-12-2(4) makes the Indiana hazardous waste program less stringent than the federal program and must be amended as required by 42 U.S.C. §6929.

! *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference.

! *Is this alternative imposed by federal law or is there a comparable federal law?* The current language makes the Indiana hazardous waste program less stringent than the current federal hazardous waste regulations. Federal law requires our rules to be at least as stringent as the federal hazardous waste program (42 U.S.C. §6929).

! *If this alternative is a federal requirement, is it different from federal law?* No.

! *If it is different, describe the differences.* There are no differences.

Alternative 11. Add a new 329 IAC 3.1-7.5 (or place the requirements at a more appropriate location) to establish management requirements for rejected hazardous waste loads. IC 13-22-5-12 requires us to have in place, by July 1, 2005, rules to manage loads of hazardous waste that are rejected by a hazardous waste treatment, storage or disposal facility. On May 22, 2001, the EPA proposed a hazardous waste manifest modification rule that contained provisions for rejected loads of hazardous waste. At this time it does not appear that EPA will finalize that rule before July 1, 2005. As a result, we are proposing to add requirements for rejected loads of hazardous waste to this rule. These would be based on the requirements in IC 13-22-5 and EPA's May 22, 2001, proposal. We anticipate adding a new 329 IAC 3.1-7.5 for these requirements, but they could be placed at some other more appropriate location in Article 3.1.

! *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This would be a full text rule based on IC 13-22-5 and currently proposed EPA standards. However, if EPA finalizes a federal rejected load rule before the July 1, 2005 deadline, we could incorporate that rule by reference.

! *Is this alternative imposed by federal law or is there a comparable federal law?* No. There is currently no corresponding federal requirement. However, since federal law requires our rules to be at least as stringent as the federal hazardous waste program (42 U.S.C. §6929), when EPA finalizes a rejected load rule, we may have to update our requirements to ensure that they are as stringent as the new federal rule.

! *If this alternative is a federal requirement, is it different from federal law?* Not applicable.

! *If it is different, describe the differences.* Not applicable.

Applicable Federal Law

Sections 3006 and 3009 of RCRA (42 U.S.C. §6926 and 42 U.S.C. §6929) and 40 CFR 271 require states that choose to operate a hazardous waste management program in lieu of the federal program to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA Administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn.

40 CFR 260 through 40 CFR 273 contain the federal hazardous waste program. These regulations have been incorporated by reference in 329 IAC 3.1. The amendments proposed in this rule would make 329 IAC 3.1 as consistent as possible with the federal hazardous waste program.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.
(2) The submission of suggestions for the development of draft rule language.
(3) The submission of information on the fiscal impact of each alternative identified in this notice.

Mailed comments should be addressed to:

#03-312(SWMB) [2003 Hazardous Waste Annual Update]
Marjorie Samuel
Rules, Planning and Outreach 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, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (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) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

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

Additional information regarding this action may be obtained from Steve Mojonnier 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. Additional information on this rule may also be foundFebruary 17, 2004 on IDEM's rulemaking website at http://www.in.gov/idem/rules/.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
OFFICE OF MEDICAID POLICY AND PLANNING
PUBLIC NOTICE REGARDING CHANGES IN STATEWIDE METHODS AND STANDARDS FOR SETTING PAYMENT RATES FOR OUTPATIENT HOSPITAL SERVICES

In accordance with the public notice requirements established at 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP), publishes this notice of changes to the methods and standards governing Medicaid reimbursement methodology for outpatient services provided by hospitals.

The reimbursement methodology for all covered outpatient hospital services shall be subject to the lower of the submitted charges for the procedure or the established fee schedule allowance for the procedure.

This payment methodology is expected to result in a reduction in Medicaid program expenditures (both state and federal dollars) of approximately $2.4 million per state fiscal year. The change in reimbursement methodology will be effective April 1, 2004.

Copies of the proposed state plan amendment and this public notice will be on file and open for public inspection by contacting the Director of the local office of the Division of Family and Children, except in Marion County. The inspection material will be maintained for viewing in Marion County at the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, and will be available from 8:30 am to 4:30 pm, Monday through Friday. Written comments from any source regarding these changes should be sent to the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, Indianapolis, IN 46204 to the attention of Zac Jackson. Written comments received will also be available for public review.

Cheryl Sullivan
Secretary
Office of the Secretary of Family and Social Services

OCCUPATIONAL SAFETY STANDARDS COMMISSION
ADOPTION BY REFERENCE
Bulletin 03-02

IC 22-8-1.1-16.2 allows the adoption of any United States Occupational Safety and Health Administration (OSHA) standard that has been lawfully adopted by OSHA under federal law to be enforced by the Indiana Department of Labor, not earlier than sixty (60) days after the effective date of the federal OSHA final standard. Notice must be given by the Indiana Department of Labor by publishing a statement describing the standard by making reference to the federal regulation, under IC 4-22-7-7(b).

The Indiana Department of Labor incorporates by reference the U.S. Department of Labor, Occupational Safety and Health Administration provisions that amend 29 CFR 1910, subpart N, the final rule for the General Industry Safety and Health Standards for materials handling and storage, motor vehicle safety, powered industrial trucks. The Indiana Department of Labor incorporates by reference the standard 29 CFR 1910, Subpart N, as published in the Federal Register, June 2, 2003, Volume 68, pages 32637 to 32638.

Federal effective dates: July 2, 2003.

Indiana effective dates: September 3, 2003.

Nancy J. Guyott
Commissioner

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-1

FOR: APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT BETWEEN THE STATE OF INDIANA AND INDIANA PROFESSIONAL LAW ENFORCEMENT ASSOCIATION, LOCAL 1041, I.U.P.A./AFL-CIO

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, constructive and cooperative relationships among state employees and management are in the public interest; and

WHEREAS, Executive Order 03-35 reaffirmed Executive Order 90-6, which identified eleven (11) appropriate employee units, provided for election of exclusive negotiating organizations, and permitted the organization elected to negotiate with the designated representative of the Executive Branch; and

WHEREAS, in 2002, employees who comprised Unit 11 elected Indiana Professional Law Enforcement Association, Local 1041, I.U.P.A./AFL-CIO as their exclusive negotiating organization; and

WHEREAS, the Public Employee Relations Board certified Indiana Professional Law Enforcement Association, Local 1041, I.U.P.A./AFL-CIO as the exclusive negotiating representative for employees in Unit 11 on December 2, 2002; and

WHEREAS, the negotiating teams for the State and Indiana Professional Law Enforcement Association, Local 1041, I.U.P.A./AFL-CIO have submitted for the approval of the Governor a Settlement that has been ratified by the membership of Indiana Professional Law Enforcement Association, Local 1041, I.U.P.A./AFL-CIO.

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby order that:

1. The Settlement with Indiana Professional Law Enforcement Association, Local 1041, I.U.P.A./AFL-CIO is hereby approved and incorporated by reference herein.
2. The Settlement shall be implemented effective January 1, 2004, and shall be administered in accordance with the laws of this State.
3. The Settlement does not supersede any existing or future Statute, Promulgated Rule or Executive Order; however, the Settlement shall be administered and construed, by those State Officers and employees subject to the executive authority of the Governor, as superseding any conflicting policies and work practices.

IN TESTIMONY WHEREOF, I Joseph E. Kernan, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 29th day of January, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

NATURAL RESOURCES COMMISSION
Information Bulletin #41
The Public Trust Doctrine on Navigable Waters and Public Freshwater Lakes
March 1, 2004

1. Prologue: The Public Trust Doctrine[1]

Recognizing the great importance of its shoreline on Lake Michigan, Indiana is a participant in the Coastal States Organization. Since 1970, the Coastal States Organization has represented the Governors of the U.S. coastal states as an advocate for improved management of the nation's oceans and the Great Lakes. In 1997, the Coastal States Organization described the "public trust doctrine"[2]:

> The Public Trust Doctrine provides that public trust lands, waters and living resources in a State are held by the State in trust for the benefit of all of the people, and establishes the right of the public to fully enjoy public trust lands, waters and living resources for a wide variety of recognized public uses. The doctrine also sets limits on the States, the public, and private owners, as well as establishing the responsibilities of the States when managing these public trust assets.

The origins of the public trust doctrine are ancient and traced "to the sixth century Institutes and Digest of Justinian, which collectively formed Roman civil law."[3] The best-known application of the public trust doctrine has been for navigable waters. Even before Indiana achieved statehood, the Northwest Ordinance of 1787 recognized the public interest in our territory's navigable waters. The ordinance declared:

> [T]he navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of said territory as to the citizens of the United States, and of those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Without using the phrase "public trust doctrine", Indiana's high courts have long recognized the concept. In 1918, for example, the Indiana Appellate Court found the state held the bed of Lake Michigan in trust for the people.[4] Several courts have addressed the public interest in navigable waters, including a 1950 decision holding that the test of navigability was whether a river or lake was capable of commercial navigation when Indiana was admitted to statehood in 1816. The West Fork of the White River in Morgan County was found to be legally navigable, and the sand and gravel within the bed of the river to be assets of Indiana citizens.[5]

In 1947, the Indiana General Assembly extended environmental protections to Indiana's "public freshwater lakes".[6] Although there are important statutory exceptions, a "public freshwater lake" is generally any "lake that has been used by the public with the acquiescence of a riparian owner."[7] Public freshwater lakes may or may not meet the judicial test for navigability. Examples of public freshwater lakes include Cedar Lake in Lake County, Pine Lake in LaPorte County, Bass Lake in Starke County, Lake Maxinkuckee in Marshall County, Lake Wawasee in Kosciusko County, and Lake James in Steuben County. The statutory chapter that provided for the protection of public freshwater lakes is commonly called the "Lakes Preservation Act". This act provides the state has "full power and control of all the public freshwater lakes" and holds and controls "all public freshwater lakes in trust for the use of all citizens of Indiana for recreational purposes".[8]

Recently, the Court of Appeals of Indiana reflected that the Lakes Preservation Act was "[p]ublic trust legislation" intended to recognize "the public's right to preserve the natural scenic beauty of our lakes and to recreational values upon the lakes." The Court observed that "Riparian landowners…continue to possess their rights with respect to a public freshwater lake, but their rights are now statutory and must be balanced with the public's rights."[9]

The Indiana General Assembly has assigned regulatory responsibility to the Department of Natural Resources with respect to both navigable waters and public freshwater lakes. The Department has "general charge" of the state's navigable waters[10] and is the licensing authority for navigable waters[11]. The Department is the regulatory authority for public freshwater lakes.[12] Significantly for both these categories of public waters, the Department is also the state agency with primary responsibility for administering boating laws.[13]

An essential element in the Department's analyses for administering its responsibilities, for navigable waters and for public freshwater lakes, must be an appropriate consideration of the public trust doctrine. The agency shall seek to achieve a fair balance among competing users, both public and private. This information bulletin seeks to bring attention to these responsibilities and to acknowledge a new focus on the public trust. In particular, the Natural Resources Commission reflects upon the import of a work group process that began in 1997 and resulted in 2000 and 2003 legislation.

2. Citizens and Legislators Seeking Solutions: the Indiana Lakes Management Work Group

In 1997, the Indiana General Assembly enacted legislation[14] to form the Indiana Lakes Management Work Group. The work group included 26 members chosen from a broad base of lakes organizations, users, and researches. Also included were Senator Robert Meeks (R-LaGrange), Senator Katie Wolf (D-Monticello), State Representative Dennis Kruse (R-Auburn), and State Representative Claire Leuck (D-Fowler). The work group was directed to do the following:

1. Conduct public meetings to hear testimony and receive written comments concerning problems affecting the lakes of Indiana.
2. Develop proposed solutions to problems affecting the lakes of Indiana.

3. Issue reports to the Natural Resources Study Committee of the Indiana General Assembly.

4. Issue an interim report before July 1, 1998, and a final report before December 31, 1999.

Upon completion of its proposed solutions, the work group was to make those solutions available in writing to the Natural Resources Study Committee, the Department of Natural Resources, and the public.

The mission statement for the work group offered a perspective harmonious with the public trust doctrine. "The mission of the Indiana Lakes Management Work Group" was "to develop solutions to problems facing Indiana lakes--solutions that result in:

- Improved water quality--lakes getting better instead of worse.
- Better management of lakes that respects and accommodates multiple users.
- Increased and broadened interest among Hoosiers in safeguarding lakes for future generations.
- Improved recreational opportunities for all lake users."[15]

The work group met 24 times between 1997 and 1999 and adopted 113 recommendations in 48 categories to help implement these solutions. Several of the recommendations anticipated new legislation, sometimes with the need for subsequent rule adoption by the Natural Resources Commission. Others sought renewed focus upon existing legislation. Those that resulted in new legislation, and the rules to assist in implementing the legislation, are discussed next. To be noted is that each of the 48 categories was a consensus document approved by diverse user interests. The resolutions and resulting legislation share a commonality in seeking to protect our great natural resources and in seeking to assure fair enjoyment among competing users. They support the principles of the public trust doctrine.

3. Work Group Resolutions Advanced: 2000 Legislation and 2003 Legislation, with Resulting DNR Programs and NRC Rule Adoptions

Legislation was enacted in 2000[16] and in 2003[17] in response to the efforts of the Indiana Lakes Management Work Group. The work group categories of recommendations and pertinent new legislation, programs, and rules are considered:

Category 3

During the September 28, 1999 meeting, the work group approved the following issue and problem statement with recommendations:

The littoral zone of a lake or reservoir is that area having water shallow enough to support the growth of rooted aquatic plants. While this area is usually associated with shallow, near-shore areas, it also includes shallow bars away from the shoreline where plants can grow. A diverse, native plant community has important functions for a healthy lake ecosystem. Native plants in the littoral zone provide habitat for fish, aquatic insects and other aquatic organisms; dampen wave energy; stabilize lake sediments; and add essential oxygen to the water.

Motorboat use is a major form of recreation on Indiana's lakes and reservoirs. While this activity brings great enjoyment to boat users, motorboats can create significant negative effects on lake quality. When motorboats operate within or too close to rooted floating-leafed and emergent aquatic plant communities, the growth and health of the plants can be reduced three-fold by turbulence and scouring caused by motorboats and their wakes. Research has shown that weakly rooted plant species are eliminated beneath water ski runs to a depth of 10 feet. In addition, boat propellers can cut plant stems and this has been shown to increase the spread of exotic invasive species such as Eurasian watermilfoil. The Wisconsin Department of Natural Resources recommends limiting boat speeds in water depths up to the maximum rooting zone of aquatic plants (10-13 feet in most Indiana lakes.)

Other research has shown that a 50-hp outboard motorboat can resuspend fine clay sediments from lake bottoms to depths of ten feet. Larger motors common on Indiana lakes would likely have effects deeper than 10 feet. Sediment resuspension increases turbidity, decreased water clarity, and liberates sediment phosphorus into the water column that contributes to excessive algal blooms.

The work group noted the then current state statute restricted boat speeds to ten miles per hour within 200 feet of public lake shorelines. A further reduction to speeds in shallow waters would promote "safer use of those waters by canoes, sailboards, and anglers. Due to the plowing effect of boats with large drafts," a ten-mile per hour speed could "increase rather than decrease the intensity of waves generated by the boat wake. Therefore, minimizing damage to shorelines and other aquatic resources can only be guaranteed by instituting a standard that reduces wake and wash, such as implementing a no-wake or idle speed standard." A recommendation of the work group was that the ten-mile per hour speed limit within 200 feet of a lake shoreline be changed to an idle speed limit.[18]

Legislative Response to Recommendations in Category 3

For most lakes, the Indiana General Assembly reduced the maximum speed, at which a person may lawfully operate a motorboat within 200 feet of the shoreline, from ten-miles per hour to idle speed.[19] "Idle speed" means the slowest possible speed, not exceeding five miles per hour, that maintains steerage so that the wake and wash created by the boat is minimal.[20]

Category 20

During the May 19, 1999, meeting, the work group approved the following issue and problem statement with recommendations:

During the Tri-State University meetings in 1996 that led to the formation of the Lakes Management Work Group, law

enforcement was the second highest ranked concern of public freshwater lake users. The view was that more enforcement presence on the water was a significant priority. The greatest support was for additional traditional conservation officers; however, there was also support for the use of other types of enforcement officers as an alternative (i.e., reserve conservation officers or officers from sheriff reserves).

The work group recommended:

a. over the next 4 years, increase the number of full-time conservation officers in areas of Indiana that have a concentration of public lakes by a minimum of 25%; and

b. provide funding to be directed to the Law Enforcement Division of DNR to be utilized on waterway enforcement.[21]

Legislative Response to Recommendations in Category 20

With the enactment of P.L.233-2003, the Indiana General Assembly increases the boat excise tax, on a graduated basis, for boats valued at more than $1,000. Indiana began collection of the increased taxes on January 1, 2004. The Legislative Services Agency estimates total additional revenues of approximately $2,500,000.[22] Pursuant to IC 6-6-11-12, one-third of the total revenues from the boat excise tax (roughly $1,200,000 annually) are deposited in the new "conservation officers marine environment fund". The Department of Natural Resources is to "expend the money in the fund exclusively for marine enforcement efforts associated with recreational boating on Indiana waters", including support for the newly established "special boat patrol needs fund" in an amount not to exceed 20% of total in the marine environmental fund.[23] The Department shall develop a formula for the distribution of grants through the special boat patrol needs fund to counties based on the number and size of lakes located in a county, the extent to which law enforcement is provided on the lakes by the county, and "[a]ny other pertinent factor".[24] This legislative response is also pertinent to the recommendations discussed later in Category 34.

Department of Natural Resources Implementation of Legislative Response to Recommendations in Category 20

The Department's Division of Law Enforcement is identifying priorities for enhanced boating enforcement. These will consider public health and safety, as well as environmental protection on public waters and appropriate implementation of the public trust doctrine. The Division of Law Enforcement will offer an allocation formula and memorandum to assist in the administration of the "special boat patrol needs fund".

Category 21

During the September 28, 1999 meeting, the work group approved the following issue and problem statement with recommendations:

On October 16, 1997, the Court of Appeals ruled that the Indiana Department of Natural Resources (DNR) has no statutory authority under [the] Lakes Preservation Act to require permits for seasonal installation of piers or other structures that are of a temporary nature, so long as the installation method has minimal impact on the bed of the lake.[25]

Although there are other areas of law that suggest DNR has the authority to regulate temporary structures in public freshwater lakes, the authority is not definitive and is cumbersome to apply.

The result of this condition of law is that DNR is unable to effectively manage public freshwater lakes in the full spirit of "public trust" as mandated by law. Additionally, the ability of public freshwater lakes, users, property owners, and local governments to resolve disputes short of expensive court battles is unrealistically limited.

Structures that are considered temporary, and have "de minimis" impact on the lake bed are left to uncontrolled proliferation. The result is loss of public usage of areas within 150 feet of shore, an increase in riparian owner disputes, and environmental harm to the lakes.

DNR has attempted to manage this problem through agency rule-making authority. This process has not adequately dealt with the problem, and clear authority must be re-established by the legislature to protect Indiana's public freshwater lakes for property owners, current users, and future stakeholders.

The work group recommended:

The Indiana Lakes Management Work Group recommends that the Indiana General Assembly amend the public freshwater lake law to add a new section that reads as follows:

IC 14-26-2-5.5. The Commission shall adopt rules under IC 14-10-2-4 to assist in the administration of this chapter. The rules must, as a minimum, do the following:

(1) Provide objective standards for licensing the placement of any temporary or permanent structure or material, or the extraction of material, over, along, or within the shoreline or waterline. These standards shall exempt any class of activities from licensing where the Commission finds the class is unlikely to pose more than a minimal potential for harm to the public rights or public trust as described in IC 14-26-2-5.

(2) Establish a process under IC 4-21.5 for the mediation of a dispute among riparian owners, or by a riparian owner against the department, relative to the usage of an area over, along, or within the shoreline or waterline for a matter within the jurisdiction of this chapter. If after a good faith effort mediation under this subdivision fails to achieve a settlement, the department shall make a determination of the dispute. A person affected by the determination may seek administrative review by the Commission.[26]

Legislative Response to Recommendations in Category 21

The Indiana General Assembly enacted IC 14-26-2-23 to implement the recommendations in Category 21. This statutory section provides:

Sec. 23. The commission shall adopt rules in the manner provided in IC 14-10-2-4 to do the following:

(1) Assist in the administration of this [Lakes Preservation Act] chapter.

(2) Provide objective standards for licensing:

(A) the placement of a temporary or permanent structure or material; or

(B) the extraction of material;

over, along, or within the shoreline or waterline. The standard shall exempt any class of activities from licensing if the commission finds that the class is unlikely to pose more than a minimal potential for harm ot the public rights described in section 5 of this chapter.

(3) Establish a process under IC 4-21.5 for the mediation of disputes among riparian owners or between a riparian owner and the department concerning usage of an area over, along, or within a shoreline or waterline for a matter within the jurisdiction of this chapter. The rule must provide that:

(A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and

(B) a person affected by the determination of the department may seek administrative review by the commission.

Natural Resources Commission Rules to Implement Legislative Response to Recommendations in Category 21

Rules to address construction within and along the shorelines of public freshwater lakes already existed before the 2000 statutory reforms. These were called into question, however, by the Department of Natural Resources v. Town of Syracuse decision that was at the heart of Recommendation 21. Included in the rules were provisions for a general license for temporary piers that meet specifications designed to minimize the likelihood of harm to the environment and the public trust.[27] With the enactment IC 14-26-2-23 to clarify agency jurisdiction over temporary structures, the Natural Resources Commission reconsidered the rules but found them to be generally sufficient. The Commission did adopt new rule provisions to help implement the mediation process required by the legislation.[28]

Category 26

During the July 28, 1999 meeting, the work group approved the following issue and problem statement with recommendations: Problems related to boat density and user conflict have been brought forth by lake users of all types. Boat speed limits, wakes, placid fishing locations, shallow water soils damage, wetlands protection, and Eurasian watermilfoil expansion are samples of the related problems brought forth. Due to current Indiana Law, the Indiana Department of Natural Resources (DNR) cannot effectively manage boater density and its associated impacts on the public freshwater lakes.

The DNR needs greater authority to regulate public freshwater lakes. The general public seems to believe the DNR can do anything it needs to do to correct lake problems and user conflicts, but the enabling laws necessary to regulate public freshwater lakes to address specific lake or local needs are not in place.

The work group recommended:

The Indiana Lakes Management Work Group recommends that the General Assembly modify IC 14-15-7-3, giving DNR the ability to regulate public freshwater lakes to the same degree it can already regulate reservoirs. By adding the proposed language below to the existing statute, DNR will be able to consider local issues that relate to individual lakes based on myriad regulatory needs.

a. Add a sixth paragraph stating: "(6) The establishment of zones in which the use of watercraft may be limited or prohibited for the purposes of fish, wildlife or botanical resource management or for the protection of users."

b. Add a seventh paragraph stating: "(7) Watercraft engaged in group or organized activities or tournaments."

Legislative Response to Recommendations in Category 26

The Indiana General Assembly amended IC 14-15-7-3(a) by authorizing the Natural Resources Commission to adopt rules for the following purposes:

(6) The establishment of zones where the use of watercraft may be limited or prohibited for the following purposes:

(A) Fish, wildlife, or botanical resource management.

(B) The protection of users.

(7) The regulation of watercraft engaged in group or organized activities or tournaments.

Natural Resources Commission Rules to Implement Legislative Response to Recommendations in Category 26

The first stage to implementing this legislation was the Commission's incorporation of IC 14-15-7-3(a)(6) into a recodification process for all the state's special boating rules. This stage was an acknowledgement of the new authority but made no substantive changes.[29]

The second stage was the adoption of rules to establish a process for reviewing petitions to establish a licensing requirement under IC 14-15-7-3(a)(7) for fishing tournaments on a designated river or lake. The rules authorize a petition to be filed with the

Commission by the County Executive where the waters are located, the Municipal Executive for the municipality if the waters are located in a municipality, or a Deputy Director for the Department of Natural Resources. Unless a river or lake is designated through this process, a licensing requirement does not apply for fishing tournaments held on public rivers or lakes. Similarly to the first stage, the second stage made no substantive changes. In other words, no new waters were designated for regulation.[30]

The third stage was the adoption of rules to protect designated wetlands on Lake Wawasee and Syracuse Lake in Kosciusko County. This stage followed requests by the Wawasee Area Conservancy Foundation, the Lake Wawasee Property Owners Association, and the Syracuse Lake Association to establish special watercraft zones to protect these fragile resources. Amendments made to 312 IAC 5-6-6 established idle speed zones for the protection of major wetlands on Lake Wawasee and Syracuse Lake, as well as two small zones where boats were prohibited on Lake Wawasee.[31] To date, this rule adoption is the only on-site application of the new authority provided by IC 14-15-7-3(a)(6), although the Commission has received citizen petitions to provide similar protections for wetlands on Lake Manitou in Fulton County and on Crooked Lake in Steuben County.

The fourth stage was rule adoption pertaining to two aspects of the 2000 statutory amendments. First, new standards were provided for the management of major organized boating activities on public waters. A "major organized boating activity" is generally one that involves more than 15 participating boats, more than 50 spectators, a prearranged schedule of limited duration, or is reasonably expected to significantly disrupt boat traffic.[32] Examples of a "major organized boating activity" include fireworks displays, flotillas, and regattas.[33] Second, amendments were directed to fishing tournaments. There were several adjustments and clarifications to the rules described in the second stage, and on-site standards were developed for fishing tournaments on Lake Wawasee and Syracuse Lake.[34] As observed by the Commission's hearing officer, they represented "a final stage in implementation of the 2000 reform legislation. The current amendments are also a logical outgrowth of the values represented by the public trust doctrine."[35]

Category 34

During its November 18, 1999 meeting, the work group approved the following issue and problem statement with recommendations:

> The Indiana Lakes Management Work Group has developed several recommendations that will improve Indiana's surface water quality, ensure recreational opportunities, and safeguard the future of the public lakes for its citizens. However, lake and watershed funding resources of all types are limited and therefore have had an adverse effect on programs that promote lake management efforts. In addition to the limited financial resources that are in place at this time, monies needed to carry forth many of the recommendations set forth in this report cannot be accomplished without additional financial support.

The work group recommended:

> The Indiana Lakes Management Work Group recommends that the "Lake Enhancement Fee" of five dollars ($5.00) paid annually at the time of boat registration be increased to fifteen ($15.00) annually and be allocated as follows:
>
> a. one-third to be appropriated as is currently set forth by statute;
>
> b. one-third to be appropriated to the Law Enforcement Division of the Indiana Department of Natural Resources to be utilized for enforcement, navigation aids programs, boater education programs, and other public awareness programs related to Indiana's waterways; and
>
> c. one-third to be used for sediment removal within the boundaries of publicly accessible lakes, where sediment was derived from watershed sources, as well as control of non-native, invasive plant and animal species in all waters where there is a clear public benefit.

Legislative Response to Recommendations in Category 34

The enactment of P.L.233-2003 was outlined previously in the consideration of the recommendations in Category 20. As requested by the work group, the legislation retained existing funding for the Lake and River Enhancement Program ("LARE"), administered by the Soil Conservation Board and the Department's Division of Soil Conservation, as previously provided by statute.[36] Revenues provided for the new "conservation officers marine enforcement fund" were discussed in the consideration of Category 20.

The third and final element of recommendations in Category 34 is funded in P.L.233 through amendments to IC 6-6-11-12.5(b)(2). In an augmentation to the LARE program, the Division of Soil Conservation will fund "lake projects, including projects to: (A) remove sediment; or (B) control exotic or invasive plants or animals." As with the "conservation officers marine enforcement fund", Indiana began the collection of increased taxes on January 1, 2004. These are projected to produce approximately $1,200,000 annually for the removal of sediment and the control of invasive species.

Department of Natural Resources Implementation of Legislative Response to Recommendations in Category 34 Regarding Sediment Removal and the Control of Exotic Species in Lakes

The Soil Conservation Board will identify the most appropriate and equitable way to distribute funds for sediment removal and control of exotic species. The Division of Soil Conservation suggested to the Soil Conservation Board that a forum be established. Doing so would allow a cross-section of affected and interested persons, the Department of Natural Resources, and some representatives of the Board to develop a consensus for rational procedures to effectuate this fund. Those recommendations

could then be appropriately circulated for general public evaluation and comment. Finally, they would be presented to the full Board for consideration, discussion, modification, and adoption. It is envisioned that a fall meeting will be held in the northeastern Indiana to solicit public comments. The goal is for the Soil Conservation Board to begin distribution of funding in July 2004.

4. Epilogue: The Public Trust Doctrine

The 2000 statutory reforms were the result of consensus resolutions from citizens with diverse interests in the use of our lakes. These resolutions were developed through legislation applying flexible management approaches that consider diverse interests. The Department of Natural Resources is implementing new programs, and the Natural Resources Commission has adopted complete sets of rules, to help implement the legislation. The resolutions, legislation, and rules provide direction and a legal foundation, but they do not make the public trust doctrine work.

Other regulatory mechanisms must assist. For example, in 2001 the Commission adopted rules to help assure construction activities on Lake Michigan are supportive of the public trust doctrine:

> If the department determines the placement of a structure as described in the application would violate the public trust doctrine, the department shall either deny the application or condition approval of the application upon terms that would allow placement of the structure without violation of the public trust doctrine. The license may be conditioned to assure that any public access will not be impeded and to provide for complete removal of the structure and site restoration, at the expense of the riparian landowner, when the structure is no longer required.[37]

Adequate service to the public trust is dependent upon more than new regulatory structures and new state funding sources. Category 24 of resolutions from the Indiana Lakes Management Work Group addressed the need for increased public access to our public waters:

> Many people have expressed concerns about the impacts of heavy lake use, including damage to lakes' natural resources, property damage, safety concerns, and overcrowding. These concerns are legitimate and are being addressed in many ways by the Lakes Management Work Group. Restricting public access to lakes would be one way to address these impacts. In general, the Work Group feels that access to public freshwater lakes should not be restricted, because all public freshwater lakes belong to all the citizens of Indiana.
>
> The Indiana Lakes Management Work Group encourages the Indiana Department of Natural Resources and other entities to acquire, develop, and maintain public access to these waters.

Since 1953, the Department of Natural Resources (or an antecedent agency, the Department of Conservation) has provided access to public waters through the statewide Public Access Program. This program focused initially on inland lakes, but it has since expanded to Lake Michigan, navigable rivers and streams, and publicly-funded reservoirs. State funding is provided primarily through the purchase of noncommercial fishing and hunting licenses for which fees are deposited in the Fish and Wildlife Fund.[38] Under the Sport Fish Restoration Act of 1950, up to 75% of State funding is eligible for reimbursement by through the U.S. Fish and Wildlife Service. Following the Wallop-Breaux amendments to the SFRA, States are required to spend at least 15% of SFRA funding on boating access to public waters.

The Department's Division of Fish and Wildlife manages 238 public access sites and 21 public fishing areas. In addition to maintaining these sites, the management plan for 2003 through 2008 calls for the acquisition, annually, of eight new access sites or fishing areas.

In August 2002, Indiana joined states participating in the national Coastal Zone Management Program. This program provides new opportunities for improving public access to waters in the Indiana Coastal Zone, an area including roughly the northern halves of Lake County and Porter County and the northwestern third of LaPorte County.

Improved public awareness of competing public uses, and how to accommodate them, is also critical to effective management of the public trust. The Department of Natural Resources is developing a website where citizens can identify when fishing tournaments, boat races, fireworks displays, and similar activities are scheduled on our public waters. This site can serve to attract persons who are interested in a scheduled lake activity, and it can help redirect them to another lake when their interests differ.

Much depends upon mutual respect for the interests of competing users. A gratifying product of public participation in our rules for Lake Wawasee and Syracuse Lake was a new sense of understanding and cooperation among a variety of interests. Homeowners, sailboat racers, fishing tournament sponsors and competitors, and fishing enthusiasts opened dialogues that only a few months ago seemed impossible. During the final stage of rule adoption for fishing tournaments and other organized boating activities, there was a genuine consensus. A representative for fishing tournaments indicated a voluntary "code of ethics" was being prepared.

The rights of citizens to fully enjoy our public waters will continue to present new challenges as the population grows and improved financial circumstances support more travel and more varied uses of those waters. Solutions must consider a social and environmental equation that is dynamic. Mutual interests can be properly served only by wisely managing the public trust to ensure the enjoyment of those waters for the present and for the future.

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[1] This information bulletin is adapted, in part, from "Competition for Lakes and Rivers: Recent Indiana Legal Reforms and the Public

Trust", J. Goss, as presented by S. Lucas to the Advanced Environmental Law Seminar, Indiana Continuing Legal Education Foundation (Nov. 13, 2003).
[2] Putting the Public Trust Doctrine to Work, Coastal States Organization (2nd Edition, 1997), p. 1.
[3] Id.
[4] Lake Sand Co. v. State, 68 Ind. App. 439, 120 N.E. 715 (1918).
[5] State v. Kivett, 228 Ind. 623, 95 N.E.2d 145 (1950).
[6] Acts 1947, c. 181 and Acts 1947, c. 301.
[7] IC 14-26-2-3.
[8] IC 14-26-2-5.
[9] Lake of the Woods v. Ralston, 748 N.E.2d 396 (Ind. App. 2001).
[10] IC 14-19-1-1(9).
[11] Notably, IC 14-29-1-8 and 312 IAC 6.
[12] IC 14-26-2 and 312 IAC 11.
[13] IC 14-15 and 312 IAC 5.
[14] Ind. P.L.239-1997.
[15] "Final Report of the Indiana Lakes Management Work Group", (Indiana Department of Environmental Management, Dec. 1999), p. 6.
[16] P.L. 38-2000 and P.L. 64-2000.
[17] P.L. 233-2003.
[18] "Final Report of the Indiana Lakes Management Work Group", pp. 14 and 15.
[19] IC 14-15-3-17. This speed limit is not limited to "public freshwater lakes" and includes, for example, Lake Michigan. Exempted from the restriction are Lake Shafer and Lake Freeman in White County.
[20] IC 14-8-2-129.
[21] "Final Report of the Indiana Lakes Management Work Group", p. 39.
[22] Fiscal Impact Statement for H.B. 1336, Office of Fiscal and Management Analysis, Legislative Services Agency (May 1, 2003).
[23] IC 14-9-8-21.5. The "special boat patrol needs fund" is described at IC 14-9-9-5.
[24] IC 14-9-9-6. The Department's Division of Law Enforcement is currently developing a formula and memorandum to assist in the administration of the "special boat patrol needs fund".
[25] Department of Natural Resources v. Town of Syracuse, 686 N.E.2d 410 (Ind. App. 1997).
[26] "Final Report of the Indiana Lakes Management Work Group", pp. 40 and 41.
[27] 312 IAC 11-3-1.
[28] 312 IAC 11-1-3 was added and 312 IAC 11-3-2 was amended effective July 21, 2001.
[29] The new authority was incorporated into the rules for public freshwater lakes at 312 IAC 5-6-1; for navigable waters other than Lake Michigan at 312 IAC 5-7-1; for Lake Michigan and its navigable tributaries in Northwest Indiana at 312 IAC 5-8-1; and, for waters owned by public utilities at 312 IAC 5-9-1. The recodification was effective January 1, 2002.
[30] 312 IAC 2-4 became effective January 1, 2002. These rules retained fishing tournament requirements that predated the 2000 statutory reforms for lakes managed through the Department's Division of State Parks and Reservoirs. These are Monroe Lake, Salamonie Lake, Mississinewa Lake, Huntington Lake, Brookville Lake, Hardy Lake, Patoka Lake, Lieber Lake, and Raccoon Lake.
[31] The amendments were effective February 15, 2003.
[32] Exempted are boat races, fishing tournaments, and water ski events that were already subject to special licensing requirements.
[33] The Indiana State Boating Law Administrator testified that the concept of "major organized boating activity" was developed in concert with the U.S. Coast Guard and consistent with Indiana's "Memorandum of Understanding with the U.S. Coast Guard for Lake Michigan, Ohio River, and Other Navigable Waters". Minutes of Natural Resources Commission (Aug. 20, 2002), p. 6.
[34] Amendments to 312 IAC 2-4 and 312 IAC 5-3 would become effective October 1, 2003 and have on-site application for the 2004 boating season.
[35] "Report of Public Hearing, Analysis, and Presentation for Final Adoption", Legislative Services Agency Document 02-236 (February 19, 2003).
[36] As provided in IC 14-32-7-12(b)(7), the Department's Division of Soil Conservation administers the LARE program to "(A) Control sediment and associated nutrient inflow into lakes and rivers. (B) Accomplish actions that will forestall or reverse the impact of that inflow and enhance the continued use of Indiana's lakes and rivers."
[37] 312 IAC 6-8-3(c).
[38] IC 14-22-3.

NATURAL RESOURCES COMMISSION
Information Bulletin #42
AOPA Committee
March 1, 2004

Purpose

The purpose of this information bulletin is to assist with the administration of a committee of the Natural Resources Commission to be known as the "AOPA Committee". The AOPA Committee was established by amendments to 312 IAC 3-1-12 that became effective on June 26, 2003.[1] A copy of section 12, as amended, is attached. These amendments authorized the AOPA Committee to grant final agency relief for matters controlled by IC 4-21.5 (commonly referred to as the "Administrative Orders and Procedures Act" or "AOPA") within IC 4-21.5-3-28 through IC 4-21.5-3-31. Perhaps most prominently, the AOPA Committee would review and act upon objections filed by a party to findings of fact, conclusions of law, and a nonfinal order of an administrative law judge.

The AOPA Committee shall provide a forum that is fully supportive of the legal responsibilities set forth in the Administrative Orders and Procedures Act. These responsibilities must be administered with an understanding of the scientific and technical nature of the Department of Natural Resources, the Historic Preservation Review Board, and their allied boards and agencies.

The AOPA Committee shall take all reasonable measures to assure a process that is transparent and consistent with the Open Door Law. Members shall not violate the prohibitions in AOPA against unlawful ex parte communications.

Appointment

As soon as practicable following the annual election required by IC 14-10-1-5, the Chair of the Natural Resources Commission shall appoint the AOPA Committee and the Chair of the AOPA Committee from the members of the Commission. The AOPA Committee shall consist of not fewer than three (3) persons, and a majority of those appointed constitute a quorum. To the extent practicable, the Chair shall include persons on the AOPA Committee who are licensed to practice law in Indiana. The Chair may supplement or modify the membership of the AOPA Committee, as needed for the efficient conduct of the proceedings, during the course of the year. A member of the AOPA Committee may serve through a designate where a designate is authorized under IC 14-10-1-1. The Chair may serve on the AOPA Committee in a capacity other than as Committee Chair.

The AOPA Committee will sometimes conduct proceedings where a member of the Commission enjoys particular scientific or technical expertise but where the person is not a member of the AOPA Committee. In these instances, the Committee Chair may appoint that person as a special advisor. A special advisor is governed by the requirements of AOPA that pertain to a member of the AOPA Committee, including the prohibition on unlawful ex parte communications.

The Director of the Department of Natural Resources is a member of the Natural Resources Commission and provides invaluable insight and guidance to its policy-making functions, particularly for rule adoption and property management. The AOPA Committee was formed with an understanding, however, that adjudicatory functions present special challenges to the Director. If the Director is to enjoy the full benefits of legal and technical advice from the Department, the Director may become disqualified from serving in an adjudicatory role under AOPA. For this reason, and to prevent any appearance of impropriety, the Director will not serve on the AOPA Committee or as a special advisory to the AOPA Committee.

Division of Hearings

The Division of Hearings shall provide logistical and technical support to the AOPA Committee and to the Committee Chair. These responsibilities include:

- Assistance in the conduct of meetings.
- Assistance with drafting orders and other entries.
- Providing updates with respect to statutory changes and reported decisions that may bear upon the responsibilities of the AOPA Committee.
- Assisting with the organization and presentation of workshops to consider crucial legal issues.
- Performing other duties assigned by the Committee Chair.

Application and Modification

The terms of this information bulletin shall be liberally construed to implement its stated purposes and those of IC 4-21.5 and 312 IAC 3-1. The Division of Hearings shall place the information bulletin on the agenda for periodic review with the initial review not later than December 31, 2006. The Chair or the Committee Chair may cause the information bulletin to be reviewed at any meeting of the Natural Resources Commission.

EFFECTIVE DATE

This information bulletin is effective January 20, 2004.

312 IAC 3-1-12 Relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including disposition of objections to nonfinal orders of administrative law judge; commission objections committee

Authority: IC 14-10-2-4; IC 4-21.5-3-28
Affected: IC 4-21.5-1-6; IC 4-21.5-3; IC 14-10-1-1; IC 25

Sec. 12. (a) This section governs relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including the disposition of objections under IC 4-21.5-3-29.

(b) A party who wishes to contest whether objections provide reasonable particularity shall move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection, and any other motion filed subsequent to the entry of the nonfinal order by the administrative law judge, and enter an appropriate order (including removal of an item from the commission agenda).

(c) If objections are timely filed, the objections shall be scheduled for argument before the commission committee established by subsection (d), simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission committee, argument shall not exceed ten (10) minutes for each party and twenty (20) minutes for each side.

(d) For the review of objections, and to consider any other appropriate relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, the chair of the commission shall appoint a committee consisting of at least three (3) members of the commission. To the extent practicable, the chair shall include persons on the committee who are licensed to practice law in Indiana. The chair shall announce the members of the committee during the first meeting of the commission held in a calendar year. The chair may supplement or modify the membership of the committee, as needed for the efficient conduct of the proceedings, during the course of the year. A member of the committee may serve through a designate where a designate is authorized under IC 14-10-1-1. A final determination by the committee is a final agency action of the commission under IC 4-21.5-1-6.

(e) At least ten (10) days before oral argument is scheduled on objections filed under subsection (c), a nonparty may file a brief with the commission committee. A copy of the brief must be served upon each party. The brief must not be more than five (5) pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission committee, a nonparty may also present oral argument for not more than five (5) minutes in support of the brief. If more than one (1) nonparty files a brief, the administrative law judge shall order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at least ten (10) days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties.

(f) Upon the written request of a party filed at least forty-eight (48) hours before an oral argument to consider objections, the commission committee shall provide the services of a stenographer or court reporter to record the argument.

(g) If objections are not filed, the secretary of the commission may affirm the findings and nonfinal order. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary.

(h) A party may move to strike all or any part of objections, a brief by a nonparty, or another pleading under this section that the party believes does not comply with this section. The administrative law judge shall act upon a motion filed under this subsection by providing relief that is consistent with IC 4-21.5 and this rule. *(Natural Resources Commission; 312 IAC 3-1-12; filed Feb 5, 1996; 4:00 p.m.: 19 IR 1320; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:30 p.m.: 26 IR 3323)*

[1] A copy of 312 IAC 3-1-12 is attached for the convenience of the Natural Resources Commission.

NATURAL RESOURCES COMMISSION
Information Bulletin #43
CZM Federal Consistency
March 1, 2004

A. PURPOSE

This information bulletin is a nonrule policy document to summarize implementation of "federal consistency" by the Indiana Lake Michigan Coastal Program. Pursuant to "federal consistency" requirements, a federal action that has reasonably foreseeable effects on a land or water use of Indiana's Lake Michigan Coastal Program Area must be consistent with the state laws described in Indiana's program. Federal activities are those that (1) are performed by a federal agency or its contractor; (2) require a federal license or another form of federal approval; or, (3) provide federal financial assistance to state or local government. In adopting the information bulletin, the purpose of the natural resources commission is to maximize benefits to the Lake Michigan Coastal Area while minimizing burdens to the state and its citizens, and the bulletin should be liberally construed to accomplish this purpose.

B. OVERVIEW

In general, a federal consistency review must be submitted:

- By a federal agency conducting an activity that will affect the Lake Michigan Coastal Area;
- By an applicant for a federal license for an activity that will affect the Lake Michigan Coastal Area; or

• By an applicant for a federal assistance project that will affect the Lake Michigan Coastal Area.

Federal consistency in Indiana is conducted through a network of state agencies coordinated through the following office:

Lake Michigan Coastal Program
Division of Soil Conservation
Department of Natural Resources
402 West Washington Street, Room W265
Indianapolis, IN 46204
Electronic mail: coastal@dnr.state.in.us

Under the network approach, whether a federal action is consistent with a state law is reviewed by the agency that administers the law. For example, the Indiana Department of Environmental Management reviews whether a federal action would violate Indiana's air pollution control law. If the law is one for which individual agency responsibility is indeterminate, the LMCP will identify itself or another agency to consider whether there is federal consistency.

Federal consistency review is completed when the LMCP determines the federal action satisfies the state laws described in Indiana's program. A determination of federal consistency does not, however, relieve a person from compliance with state law.

C. DEFINITIONS

These definitions apply throughout this information bulletin:

"General license" means a license for a regulated activity, the terms and conditions of which are defined by law, and to which a person may elect to adhere instead of completing a formal application process for the activity.

"Including" means including but not limited to.

"LMCP" means the Indiana Lake Michigan Coastal Program.

"Law" means a constitutional provision, judicial decision, administrative decision, statute, regulation, rule, or other legally binding document by which Indiana exerts control over private and public land and water uses and natural resources of the LMCP area. A "law" describes the term "enforceable policy" as used in 16 U.S.C. 1453(6a).

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

"Nonrule policy document" means a statement by a state agency that is issued under IC 4-22-7-7. Included within the definition, under IC 4-22-7-7(a)(5), is a statement that:

- interprets, supplements, or implements a statute or rule;
- has not been adopted as a rule;
- is not intended to have the effect of law; and
- is used in conducting the agency's external affairs.

"Ordinary high watermark" means the line on the shore of a river, stream, or lake established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:

- A clear and natural line impressed on the bank;
- Shelving;
- Changes in the character of the soil;
- The destruction of terrestrial vegetation;
- The presence of litter or debris.

For Lake Michigan, the ordinary high watermark defines the extent of the beach and is delineated at 581.5 feet I.G.L.D., 1985 (582.252 feet N.G.V.D., 1929).

"Regulation" means a measure intended to have the force and effect of law and adopted by a federal agency under 5 U.S.C. 551 through 559.

"Rule" means a measure intended to have the force and effect of law and adopted by a state agency under IC 4-22-2; a state agency statement, designed to have the effect of law that implements, interprets, or prescribes either a law or policy or the organization, procedure, or practice requirements of an agency.

D. EXEMPTED ACTIVITIES

This section identifies activities exempted from federal consistency review. These activities are believed unlikely to have more than a minimal potential for harm to a land or water resource within LMPC Area. As a prerequisite to the exemption, the LMCP may require an assurance a person will conduct the activity in compliance with the terms of the general license:

• An activity conducted (even if supported in whole or part by a grant of federal financial assistance to a state or local government) under a general license approved by a State agency. Examples of a general license are as follows:

(1) The placement of beach nourishment to Lake Michigan under 312 IAC 6-6.

(2) The placement of a utility line crossing under 312 IAC 10-5-4(c).

(3) The management of storm water run-off associated with construction under 327 IAC 15-5.

• An activity conducted under a general license approved by a federal agency. Examples are as follows:

(1) The placement of fill under Section 404 of the Clean Water Act (33 U.S.C. 1344), pursuant to a Nationwide Permit from the U.S. Army Corps, unless the activity is one for which Water Quality Certification under Section 401 of the Clean Water Act has been conditioned or denied by the Indiana Department of Environmental Management.

(2) Water quality certification and the placement of fill under Section 401 and Section 404 of the Clean Water Act under a Regional General Permit by the U.S. Army Corps and the Indiana Department of Environmental Management.

• An activity where the only required federal license results from the Section 106 Process (16 U.S.C. 470 and 36 CFR Part 800) of the National Historic Preservation Act (NHPA), unless the activity is in or within 100 feet of the ordinary high watermark of a navigable waterway identified in "Roster of Indiana Waters Declared Navigable or Nonnavigable", 20 IND. REG. 2920 (July 1, 1997) and available online at http://www.in.gov/nrc/policy/navigati.html

• Federal financial assistance to a state or local government where the purposes for which the assistance may be applied are limited to one or a combination of the following:

(1) Training and outreach, including transportation and the reimbursement of expenses associated with attendance at seminars and similar functions.

(2) The preparation or distribution of printed or electronic publications.

(3) The preparation of inventories or conduct of surveys that do not involve the physical disturbance of buildings, lands, waters, plants, or animals.

(4) The acquisition of equipment used primarily for the promotion of public health or safety.

E. APPLICATIONS

This section governs applications to demonstrate federal consistency. No fee is required. No application form is required. The application must include information reasonably required to determine whether an activity would be compliant with state law. A federal consistency application is initiated when the LMCP receives this information for one of the following:

• A consistency determination from a federal agency conducting an activity.

• A copy of an application for a federal license, from the license applicant, accompanied by a federal consistency certification.

• A copy of an application for federal financial assistance accompanied by a federal consistency certification.

An application for a federal consistency certification must be delivered to the LMCP at least 60 days before a federal agency action or the grant of federal financial assistance. An application for a federal consistency certification must be delivered to the LMCP at least 90 days before action on a federal license.

In order to facilitate prompt review by the LMCP, the applicant is encouraged to make submittals in an electronic format that is compatible with agency systems.

F. REVIEW PROCEDURES

This section outlines review procedures by the LMCP following the receipt of an application for a federal consistency certification. An interested person must strictly comply with the timeframes described here. The applicant and the LMCP may, however, enter a written agreement for the extension of a timeframe other than the timeframe described in section F9:

1. The information is filed and assigned a Federal Consistency Project (FCP) number.

2. The information (or a brief summary of the information) is distributed by electronic mail to each networked state agency for federal consistency review. Additional information posted to LMCP website.

3. A public notice of the proposed activity is published on the LMCP's website in the LMCP Federal Consistency Register. The LMCP shall maintain a list of interested parties and notify them when the LMCP Federal Consistency Register is updated. Interested parties may include libraries and designated local officials and any person who wishes to receive the information. The LMCP may establish subscription fee schedules to achieve reimbursement for costs associated with printing and mailing. Where practicable, the primary distribution medium will be electronic.

4. The public may offer comments addressed to federal consistency. These comments may be considered by the LMCP, however, only if received within 10 days of publication of notice on the website or of mailing of the notice, whichever occurs later. Any person who asserts the activity would not meet federal consistency must state with reasonable particularity the state law or laws that would be violated.

5. The LMCP shall provide the applicant, and any person who has offered timely comments, with written notice of its intention to concur or object to a certification of federal consistency:

A. Within 40 days for a federal agency action or a grant of federal financial assistance.

B. Except as provided in section F6, within 70 days for a federal license.

If the LMCP intends to object to the certification, the LMCP shall provide:

(1) The rationale for the disagreement.

(2) An explanation how the proposed activity is inconsistent with state law.

(3) Alternative measures that, if implemented, would make the proposed activity consistent with state law.

(4) If the objection is based on lack of sufficient information, the notice shall describe the type of information needed to determine consistency and the rationale for its need.

6. If the LMCP notifies the applicant and the federal agency within 90 days that additional time is required to complete the state's consistency review, the state automatically receives an additional 90 days to complete the review. Under this section, the LMCP shall provide a written notice of its intention to concur or object within 170 days of the filing of an application for a federal consistency determination.

7. Any person may supplement the record of the LMCP within 5 days of issuance of the notice described in section F5 or F6. In addition, an applicant for the federal consistency certification may request informal review from the Division of Hearings of the Natural Resources Commission. In the request, the applicant must specify whether it seeks facilitated adjudication or mediation. The Division of Hearings shall complete all proceeding and issue a federal consistency objection or concurrence within 10 days of the review request. If the Division of Hearings fails to enter a timely disposition, the LMCP shall reassume jurisdiction and make a final objection or concurrence under section F8.

8. If no request for review is sought under section F7, the LMCP shall either object to or concur with the certification of federal consistency. For a federal agency action or a grant of federal financial assistance, the objection or concurrence must be made within 60 days of the filing of an application for a federal consistency certification. For a federal license, the objection or concurrence must be made within 90 days (or 180 days if an extension of time is obtained under section F6) of the filing. If the state fails to make a timely objection or concurrence under this section or section F7, the applicant is presumed to have received a certification of federal consistency.

9. If there is an objection under section F7 or F8, the LMCP shall notify the federal agency, the Director of the Office of Coastal Resource Management, and the applicant (if other than a federal agency). The notice shall describe the right of administrative review to the Secretary of Commerce under 15 CFR Part 930. A federal agency or applicant who has not exercised the opportunity for informal review under section F7 does not waive the right to review under this section. A person other than the federal agency or applicant lacks standing to seek administrative review under 15 CFR Part 930. There is no right to state judicial review of an objection to or concurrence with a federal consistency certification.

G. EMERGENCIES

The LMCP may authorize action without obtaining a certification of federal consistency where the action is reasonably required to respond to an emergency. An authorization under this part does not relieve a person from compliance with any law or from the possibility that remediation may subsequently be required to achieve federal consistency. Failure by a person to make timely application for a federal consistency certification does not constitute an emergency.

H. SUPPLEMENTAL INFORMATION

Appendix A contains detailed information regarding the requirements of Federal Consistency certification. Appendix A may be referenced in implementation of this information bulletin. Included are the following: Federal Agency Activities and Development Projects requiring Consistency certification (Section III. Table A), Federal License and Permit Actions requiring Consistency certification (Section III. Table B), and Federal Assistance requiring Consistency certification (Section III. Table C). Matrices 5-1 through 5-10 include additional information regarding applicable state laws. Please refer to LMCP program document and website at http://www.in.gov/dnr/lakemich/federal/matrix.html.

I. EFFECTIVE DATES

The effective date of the Coastal Zone Management program in Indiana is August 12, 2002. This information bulletin is effective March 1, 2004.

J. MODIFICATIONS TO INFORMATION BULLETIN

In order to accomplish the stated purpose of this information bulletin, and to remain current with federal law and state law, modifications will be required periodically. The LMCP and Division of Hearings are directed to regularly present the information bulletin to the Natural Resources Commission for review. The first presentation shall occur not later than March 1, 2007.

Appendix A:

Chapter 11: Federal Consistency (Excerpted from the Lake Michigan Coastal Program Document)

Section I

Introduction

The term "federal consistency" refers to the requirement of the Coastal Zone Management Act, (CZMA), 16 U.S.C. 1451, 1456 et seq., and implementing regulations at 15 CFR Part 930, that certain federal actions that affect any land or water use or natural resource of a state's coastal zone be consistent with the state's federally approved coastal program. Indiana's coastal program is based upon existing state laws, which will be considered as Indiana's enforceable policies for the purposes of federal consistency. Therefore, federal consistency will be required for the state laws described in Chapter 5: Existing Management Authorities. It is important to note that Indiana's decisions for federal consistency purposes will be based on whether an existing state law, as described in Chapter 5 [of the Lake Michigan Coastal Document], would apply to the proposed action. Consistency will only be required of actions addressed by state laws, regardless of whether it is conducted by a local, state, or federal entity. Please refer to the cross-reference tables in Chapter 5 for guidance on which activities are applicable to federal consistency.

The following federal actions are subject to federal consistency:

1. Federal agency activities;
2. Federal license or permit activities- activities by private enterprise or by state or local government which require federal approval of some form; and
3. Federal financial assistance to state and local governments.

The federal consistency requirement encourages cooperation, coordination, and communication among governmental entities. Federal consistency also gives the state an effective voice in actions of the federal government affecting the state's coastal zone.

The Indiana Lake Michigan Coastal Program (LMCP) is a comprehensive networked program that relies on the appropriate state agencies to evaluate the federal actions outlined above for consistency. Each of the state agencies networked with the LMCP manages its own responsibilities, issues its own permits, administers its own federal grant monies, etc. The DNR, as the lead state agency, coordinates federal consistency reviews with these state agencies and serves as the point of contact for consistency reviews.

The federal consistency process applies to activities that have a reasonably foreseeable effect on the coastal zone. The coastal zone is defined in Chapter 3: The Coastal Program Area. The LMCP created a list of activities for each of the three categories of federal actions subject to consistency: 1) federal agency activities; 2) federal license or permit activities; and 3) federal financial assistance activities. These lists are Table A, Table B, and Table C respectively in Section III of this chapter. The federal consistency process may apply to activities that are not listed in this chapter if the unlisted activity will have reasonably foreseeable effects on the coastal zone.

For federal agency activities, if the federal agency finds that a proposed activity will affect the coastal zone, then the federal agency must prepare and submit a "consistency determination" to the LMCP.

An applicant for a federal license or permit activity that affects the coastal zone must submit a "consistency certification" in the application to the federal agency, furnishing the LMCP a copy of such certification and data and information necessary to demonstrate consistency. A consistency certification states that the proposed activity complies with and will be conducted in a manner consistent with Indiana's state laws.

For federal financial assistance for projects that will affect Indiana's coastal zone, the applicant must request a "consistency concurrence" from the LMCP.

A detailed description of the federal consistency process for each category of activities is detailed below.

A. Federal Agency Activities

A federal agency activity is any function performed by, or on behalf of, a federal agency in the exercise of its statutory responsibilities, but does not include the granting of a federal license or permit. However, the term includes federal development projects, which involve the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, use, or disposal of land or water resources. To be consistent with the CZMA, Indiana requires that any federal agency activity that affects Indiana's coastal zone be carried out in a manner that is "consistent to the maximum extent practicable" with state laws.

Table A in Section III of this chapter details those federal agency activities that the LMCP believes will require a consistency determination. The LMCP will monitor unlisted federal activities and will properly notify the appropriate federal agency when it discovers an unlisted activity requiring a consistency determination. Even so, the federal agency must at least provide the LMCP with a consistency determination for all development projects (e.g., construction) in the coastal zone, whether such project is listed or unlisted.

Federal consistency requirements for federal agency activities are detailed at 16 U.S.C. 1456(c)(1) and (2), and at 15 CFR Part 930 subpart C. There is no categorical exemption for any federal activity. However, under certain circumstances the President may exempt a specific federal activity. (see 16 U.S.C. 1456(c)(1)(B)).

Consistency Determination and Review Process

The federal agency proposing an activity within or outside of Indiana's coastal zone decides if the proposed activity will affect any land or water use or natural resource of the coastal zone. All "development projects" (i.e., construction) within the coastal zone are construed as activities affecting the zone.

If the federal agency decides that the activity does affect Indiana's coastal zone, it prepares and submits to the LMCP a consistency determination at least 90 days before final approval of the activity. If the agency decides that the activity does not affect the zone, the agency may have to provide the state (at least 90 days prior to final approval of the activity) with a negative determination under 15 CFR 930.35.

A consistency determination for a federal agency activity affecting Indiana's coastal zone is an assertion by a federal agency that the activity will be conducted consistent with state laws to the maximum extent practicable. The words "maximum extent practicable" mean fully consistent, unless compliance is prohibited by existing law applicable to the federal agency's operations. The agency may also deviate from full consistency when unforeseen circumstances arising after approval of the Indiana coastal program present the agency with a substantial obstacle that prevents complete adherence to state laws.

A consistency determination must include a detailed description of the activity, its coastal zone effects, and comprehensive data and information sufficient to support such determination.

The LMCP coordinates the state's review of the consistency determination with the appropriate state agencies. The state has 60 days from receipt (plus appropriate extensions, if granted) to concur with or object to the federal agency's consistency determination. Agreement is presumed if the LMCP does not respond (or request an extension) within 60 days. If the LMCP disagrees with a consistency determination, it must describe how the proposed activity will be inconsistent and should describe any alternative measures that would allow the activity to proceed. If the federal agency has failed to provide sufficient information, the LMCP must describe the nature of the information required and its necessity.

The LMCP will provide public notice according to IC 4-21.5 and 15 CFR 930.42 after a consistency determination has been received, except in cases where earlier public notice on the consistency determination by the Federal agency or State agency provides public notice. Where possible, the LMCP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data. The public will be able to provide comment on whether the project is consistent with Indiana's state laws.

If there is a dispute between the federal agency and the LMCP regarding the consistency determination, either party may seek the mediation services of the Secretary of Commerce or the Office of Ocean and Coastal Resource Management (OCRM).

B. Federal License or Permit Actions

Federal license or permit requirements are detailed at 16 U.S.C.1456(c)(3)(A), and at 15 CFR Part 930 Subpart D. An applicant for a federal license or permit must, in its application to the federal agency, certify that its proposed activity complies with and will be conducted in a manner consistent with the Indiana Lake Michigan Coastal Program. The consistency certification shall read as follows: "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program." The LMCP, and therefore federal consistency requirements, are based on Indiana's existing state laws.

An applicant for a federal license or permit that affects Indiana's coastal zone should consult with the LMCP prior to submission of the consistency certification. Upon submission of the consistency certification, the applicant shall furnish the LMCP with data, including a detailed description of the activity, maps, and a brief assessment of probable effects to the coastal zone. The LMCP will coordinate with the appropriate state agency to review consistency.

Access to information contained in an application is governed by state law, IC 5-14-3 (sometimes called the "Access to Public Records Act"). An applicant may seek to have records excepted from the Access to Public Records Act to the extent the records are confidential, contain trade secrets, or are otherwise exempted from disclosure at IC 5-14-3-4. An applicant who is dissatisfied with a status certification by the LMCP, relating to public disclosure, may have the certification reviewed pursuant to the Indiana Administrative Orders and Procedures Act (AOPA).

Consistency Certification and Review Process

For an activity listed in Table B in Section III of this chapter, applicants for federal licenses or permits must submit a consistency certification in their application to the federal agency, furnishing the LMCP a copy of such certification and data and information necessary to demonstrate consistency.

For an unlisted activity, an applicant is required to submit a consistency certification if: a) the LMCP decides that such activity will affect Indiana's coastal zone; b) the LMCP properly informs the federal agency, the applicant, and OCRM; and c) OCRM approves of the LMCP's decision. The federal agency and the applicant have 15 days from receipt of the LMCP's decision to provide comments to OCRM. In the event of a dispute between a federal agency and the LMCP regarding whether a listed or unlisted federal license or permit activity is subject to consistency review, either party may seek mediation by the Secretary of Commerce.

The consistency certification consists of a statement in a letter to the LMCP that states, "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program." The applicant must also furnish the LMCP with a sufficient project description and data described at 15 CFR 930.58 to demonstrate consistency.

Following the LMCP's receipt of the consistency certification and the required data, it will provide public notice according to IC 4-21.5 and 15 CFR 930.61. Where possible, the LMCP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data.

If the consistency review will take over three months, it must notify the applicant and the federal agency. The LMCP will concur or object to the consistency certification within six months.

If the same activity requiring a federal license or permit also requires a state permit, the issuance of a permit by the state will include and constitute a consistency decision.

The state will evaluate project consistency based on applicable state laws as described in Chapter 5 of the LMCP. Consistency will only be required on activities that are subject to state laws. Please refer to the cross-reference tables in Chapter 5 for guidance on which activities are applicable to federal consistency. Early coordination with the LMCP is encouraged for projects affecting the Coastal Program Area.

If the LMCP concurs with the consistency certification, it will notify the federal agency and the applicant immediately. The agency is then free to either issue or deny the federal license or permit. In the latter case, the federal agency must immediately notify

the state and the applicant. If the LMCP objects to the consistency certification, it must notify the applicant, the federal agency, and OCRM, and the federal agency must not issue the license or permit, unless the applicant successfully appeals to the Secretary of Commerce.

C. Federal Financial Assistance

The requirements for federal financial assistance are detailed at 16 U.S.C. 1456(d), and at 15 CFR 930 Subpart F. This provision ensures that any unit of state or local government applying for federal financial aid for activities that affect the state's coastal zone receives such federal aid only when such activities are consistent with Indiana's laws (as described in Chapter 5: Existing Management Authorities).

Federal assistance is categorized in the Catalog of Federal Domestic Assistance, where it is grouped by agency and assigned a five-digit number. Table C reflects such grouping and numbering, and lists those activities which would potentially affect the coastal zone. The LMCP will coordinate these activities for consistency review, and will provide the list to federal agencies and units of State or local government empowered to undertake federally assisted activities that may affect the coastal zone.

Consistency Review Process

A unit of state or local government, or any related public entity, submitting an application for federal financial assistance for an activity affecting Indiana's coastal zone must obtain the LMCP's consistency concurrence in order to receive such assistance. The applicant should submit the application for federal assistance to the LMCP.

The LMCP will conduct the consistency review for federal financial assistance. The LMCP will decide which of the applications are for proposed activities that would affect Indiana's coastal zone, and coordinate with the appropriate state agency for consistency review. In the event of a dispute between a federal agency and the LMCP regarding whether a federal assistance activity is subject to consistency review, either party may request mediation by the Secretary of Commerce.

The LMCP can either concur with or object to the application based on the consistency of proposed actions within the application. The LMCP will notify the applicant and the federal agency of its decision within 60 days of receipt of application for federal assistance. Objections will also be sent to OCRM.

If the LMCP determines that the proposed project is consistent with state laws, the federal agency may approve or deny the request for assistance. If the federal agency denies the request, it must immediately notify the applicant and the LMCP. If the LMCP objects to the proposed project, the federal agency shall not approve assistance for the project, unless the applicant successfully appeals to the Secretary of Commerce.

Section II: CONFLICT RESOLUTION, APPEAL, AND SECRETARIAL REVIEW

Conflict Resolution

In the event of a dispute between the federal agency and Indiana over whether the federal activity, federal license or permit, or federal financial assistance affects the coastal zone or whether a consistency determination for a federal activity was correctly made, either party may seek mediation by the Secretary of Commerce or through OCRM (15 CFR Subpart G). The responding party has the option of participating, but if it declines, it must indicate the basis for its refusal to participate. The Secretary of Commerce will attempt to encourage participation, but if unsuccessful will cease efforts to mediate. Judicial review is available to any party without having to exhaust the mediation process.

Appeal Process

The applicant for a federal license or permit or for federal financial aid who has been subject to a consistency objection by the LMCP may appeal to the Secretary within 30 days of receipt of Indiana's objection. (15 CFR Subpart H). To appeal, the applicant should file a notice of appeal with the Secretary of Commerce, accompanied by a statement in support of the applicant's position and supporting data. The applicant should also send copies of these documents to the LMCP and the federal agency involved.

If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the federal agency may issue the license or permit or grant the financial aid. This is called a Secretarial override. If the Secretary does not make either of these findings, the federal agency shall not approve the activity. A Secretarial override does not obviate the need for the applicant to obtain any permit or other authorization required by the state of Indiana.

Section III: Lists of Federal Activities Subject to Federal Consistency

Table A. Federal Agency Activities and Development Projects

Department of Defense- Secretary of the Army and the Army Corps of Engineers –

33 U.S.C. 404-426, 33 U.S.C. 471-472, 33 U.S.C. 540-633, 33 U.S.C. 701, 16 U.S.C. 460d, 42 U.S.C. 1962d-5, 10 U.S.C. 2801, 33 U.S.C. 1251

- Constructing, maintaining and improving channels or subsurface tunnels
- Dredging, storing, testing, sampling, dewatering, and disposing of dredged material
- Selection of storage, dewatering, and disposal sites for dredged material
- Building, maintaining, and repairing breakwaters, jetties, barriers, harbors, piers, docks
- Placing pipes or pipelines on, over, or under the lake bottom
- Establishment of harbor lines

• Creation of permanent sand bypass systems
• Creating habitat areas, including wetlands and offshore islands, from dredged material
• Beach nourishment and replenishment activities, reinforcing dunes and beaches
• Creation of man-made dunes and other man-made land
• Road and roadbed construction activities
• Building and maintaining erosion control structures
• Constructing navigational works, and marking anchorage grounds
• Constructing and maintaining dams and reservoirs, and providing hydroelectric power
• Constructing and maintaining flood control works, i.e., floodwalls, levees, diversion channels
• Granting easements for rights-of-way for public roads on lands acquired by the United States for river and harbor and flood control improvements, 33 U.S.C. 558c
• Land acquisition or disposal, including sites for disposal of dredged material
• Ice management practices
• Cleanup activities in areas contaminated with hazardous waste, radioactive waste, toxic waste, active munitions, hazardous substances or materials, or other wastes or debris
• Design and management of construction for homes, schools, hospitals, day care centers, office buildings, airfields, warehouses, and training ranges for military and their families
• Purchase, management, and disposal of land for the Army and Air Force
• Providing engineering expertise to other fed agencies, state & local governments, and others
• Constructing, operating, and maintaining Army facilities
• Conducting projects that impact existing or planned research projects and contracts
• Coastal surveys, monitoring, aerial photos, Lidar, and coastal erosion mapping efforts
• Activities and other projects with the potential to impact coastal lands and waters
• Constructing, maintaining, and operating park and recreation facilities at water resource development projects

Department of Defense- Air Force, Army, and Navy – 10 U.S.C.

• Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation, or other facilities)
• Improvements to military bases
• Base closures or realignments
• Military or Naval exercises
• Plans, procedures, and facilities for handling storage use zones
• Establishment of impact, compatibility, or restricted use zones
• Disposal of Defense property, including disposal and reuse plans for base closures
• Air Force, Army, or Navy manufacture, storage, transportation, treatment, or disposal of radioactive, hazardous, or other waste or hazardous substances, directly or by contractor
• Manufacture, transport, storage, or disposal of weapons, biological or nerve agents, nerve or mustard gas, napalm, explosives, nuclear power plant waste, etc.
• Causing or discovering the presence of nuclear powered vessels in the coastal zone or in other areas which could reasonably be expected to affect the coastal zone

Department of Interior- National Park Service – 16 U.S.C. 1, 16 U.S.C. 460u

• Acquisitions of land and interest in land; granting rights-of-way
• Area and unit management
• Location, design, acquisition, construction, maintenance, and removal of facilities
• Removal of houses, including leaseback houses
• Entering into concession contracts, establishing and modifying concession facilities
• Activities as natural resources trustee in "Area of Concern", Lake County

Department of Interior- U.S. Fish and Wildlife Service – 16 U.S.C. 742a

• Management of National Wildlife Refuges
• Management of waterfowl production areas
• Construction or modification of hatcheries, refuge facilities, office buildings, residences, laboratories, recreation facilities, water-control structures, and special purpose structures
• Acquisition of lands, wetlands, and other suitable habitat for migratory birds, endangered species, and other wildlife; granting rights-of-way
• Fish habitat creation, maintenance, and management
• Construction of visitor facilities and environmental education centers

• Construction of roadways, dikes, and dams
• Construction of sewerage facilities for domestic and hatchery effluent needs
• Recovery plans under Endangered Species Act, 16 U.S.C. 1531
• Nuisance species (i.e., zebra mussel, lamprey) control measures
• Granting easements for shooting and fishing activities under 16 U.S.C 661
• Classification and leasing of land under 16 U.S.C. 666g
• Activities as natural resources trustee in "Area of Concern", Lake County

Department of Interior- U.S. Geological Survey – 43 U.S.C. 31
• Installation, operation, and maintenance of acoustic water velocity meters or other devices in waters of the coastal zone

Department of Interior- Bureau of Land Management – 43 U.S.C. 2
5 U.S.C.A. Appx.1, Reorg. Plan 3 of 1946. IV
• Disposal and disposition of federal lands and structures, including lighthouses
• Acquisition of land or interest in land, construction of facilities

General Services Administration – 40 U.S.C.
• Acquisition, location, design, construction, development, management, and leasing (as lessor or lessee) of federal government property or buildings, leased or owned by federal government
• Disposition and disposal of federal surplus lands and structures

Department of Transportation- U.S. Coast Guard – 49 U.S.C. 108, 14 U.S.C.
• Location, design, construction, alteration, abandonment, or disposition of Coast Guard stations, bases, and lighthouses
• Location, placement, or removal of navigation devices which are not part of the routine operations under the Aids to Navigation program
• Expansion, abandonment, designation of anchorages, lighting areas, and shipping lanes
• Ice management practices and activities, including ice breaking
• Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under Section 311 of the Clean Water Act, 33 U.S.C. 1321, as amended by the Oil Pollution Control Act of 1990, 33 U.S.C. 2701
• Responses to the release of hazardous substances under CERCLA, 42 U.S.C. 9601
• Designation and management of Regulated Navigation Areas and Limited Access Areas identified in 33 CFR 165
• Designation of Security and Safety Zones and other activities under the Port and Waterways Safety Act, 33 U.S.C. 1221
• Construction, operation, maintaining, improving or expanding Vessel Traffic Services under the Port and Waterways Safety Act, 33 U.S.C. 1221
• Regulating the bulk transport by vessel of hazardous material or petroleum products

Department of Transportation- Federal Aviation Administration – 49 U.S.C. 106, 49 U.S.C. 40101, 49 U.S.C. 44501, 49 U.S.C. 44701, 49 U.S.C. 47501
• Location and design, installation, construction, operation, maintenance, quality assurance, testing, and demolition of airports and other aids to air navigation
• Development and implementation of programs to control aircraft noise and other environmental effects of civil aviation, and allocating use of airspace
• Procedures re transport of radioactive materials on passenger-carrying aircraft

Department of Transportation- Surface Transportation Board – 49 U.S.C. 10101
• Line transfers, leases, and trackage rights
• Line sales, including those to non-carriers
• Line constructions, including line crossings
• Design, construction, expansion, curtailment, or upgrading of railroad facilities or services, including bridges
• Removal of trackage; disposition of right-of-way
• Line abandonment, including Rails to Trails and Public Use Provision for Right-of-way
• Feeder Line Development Program

Department of Transportation-Federal Highway Administration – 49 U.S.C. 104, 49 U.S.C.S. Appx 1653
• Highway, bridge, and causeway design, construction, maintenance, and repair
• Land acquisition
• Implementation of innovative or other technology affecting traffic control or flow
• Highway routing of hazardous materials

Department of Transportation- Maritime Administration – 49 U.S.C. 109, 40 U.S.C. 474, 46 U.S.C.S. Appx 861, 46 U.S.C.S. Appx 1101, 46 U.S.C. Appx 1601
• Port planning

Department of Transportation- Federal Railroad Administration 49 U.S.C. 103
• Orders dealing with dangers caused by unsafe rail transport of hazardous materials

Department of Commerce- National Oceanic and Atmospheric Administration – Reorganization Plan No.4 of 1970 at 5 U.S.C.S. 903, 15 U.S.C. 1501, 33 U.S.C. 1251

• Placement of buoys, platforms, or other objects or structures in coastal waters

• Construction, installation, maintenance, or removal of lake level gauging stations or other structures

Environmental Protection Agency – 42 U.S.C. 6901, 42 U.S.C. 9601, 33 U.S.C. 1341, 42 U.S.C. 300h

• Activities conducted under CERCLA (Superfund), 42 U.S.C. 9601

• Activities conducted under Resource Conservation & Recovery Act, 42 U.S.C. 6901

• Sediment sampling and sediment testing

• Open disposal of dredged material

• Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under the Oil Pollution Control Act, 33 U.S.C. 1321

Department of Energy- Federal Energy Regulatory Commission – 42 U.S.C. 7171, 16 U.S.C. 796

• Delivery of oil or coal by ship

• Orders for furnishing of adequate service under the FPA, 16 U.S.C. 824f

• Licensee's exercise of eminent domain (as agent of the U.S.) under FPA, 16 U.S.C. 814

• Grant of right of eminent domain for right of way for natural gas pipeline under the Natural Gas Act, 15 U.S.C. 717f (h)

Department of Justice- U.S. Marshals Service – 28 U.S.C. 561, 28 U.S.C. 2001

• Disposition of property acquired by the Marshals Service

Nuclear Regulatory Commission – 42 U.S.C. 2011, 42 U.S.C. 5841

• The siting, construction and operation of nuclear generating stations, power plants, fuel storage, and processing centers

• Transportation of nuclear waste through the coastal zone or in any other area where such transport could reasonably be expected to affect the coastal zone

Federal Emergency Management Agency – 42 U.S.C. 4001, 42 U.S.C. 51

• Disaster-related activities (i.e. planning, mitigation activities, monitoring reconstruction) in the coastal zone or in any other area where such activities could be reasonably expected to affect the coastal zone

Table B. Federal License and Permit Actions

Department of Defense- Secretary of the Army, and Army Corps of Engineers

• Permits for construction of dams or dikes in or over navigable waters required under Section 9 of the Rivers and Harbors Act of 1899, 33 U.S.C. 401

• Permits for the construction of structures (i.e. piers, wharves, breakwaters, bulkheads, jetties, weirs, transmission lines, pipes, or pipelines) in, under, or over navigable waters required by Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403

• Permits for excavating or dredging from navigable waters, or for the alteration or modification of the course, location, condition, or capacity of such waters, required by Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403

• Permits for disposal of dredged or fill material into navigable waters required by Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403

• Permits for the disposal of dredged or fill material into waters of the United States required by Section 404 of the Clean Water Act, 33 U.S.C. 1344

• Permits for the alteration or occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S., or of any piece of plant used in the construction of such work, or of any material composing such work, required by Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408

• Approval of plans for improvement made at private expense under USACE supervision pursuant to Section 1 of the Rivers and Harbors Act of 1902, 33 U.S.C. 565

Department of Energy- Federal Energy Regulatory Commission – 42 U.S.C. 7101

• Licenses, renewals, or amendments to licenses, or approvals for transfers of licenses or rights thereunder, for nonfederal hydroelectric projects and primary transmission lines under Sec. 3(11), 4(e), 8, and 15 of the Federal Power Act (FPA), 16 U.S.C. 796 (11), 797(e), 801, and 808, and under Sec. 405 of FPA, 16 U.S.C. 2701

• Granting exemptions from Federal Power Act (FPA) requirements, 16 U.S.C. 823a

• Applications for orders for interconnection of electric transmission facilities, and sales and exchanges of energy, under Section 202 of the FPA, 16 U.S.C. 824a

• Application for orders authorizing disposition, consolidation, or merger of facilities or any part thereof under Sec.203 of the FPA, 16 U.S.C. 824b

• Applications for physical connection orders under Section 210 of the FPA, 16 U.S.C. 824i

• Applications for transmission service orders under Section 211 of the FPA, 16 U.S.C. 824j

• Regulation of transportation of natural gas, and the entities engaged in such, under Sec.1 (b) of the Natural Gas Act, 15 U.S.C. 717 (b)

• Orders for extension or improvement of natural gas transportation facilities, and orders to establish physical connection of transportation facilities with distributors under Sec. 7(a) of the Natural Gas Act (NGA), 15 U.S.C. 717f (a)
• Issuing certificates of public convenience and necessity for the construction and operation of interstate natural gas pipelines and pipeline facilities, and for the transportation of natural gas, under 7 (c) of the NGA, 15 U.S.C. 717 f (c)
• Issuing declaratory orders under the Administrative Procedure Act, 5 U.S.C. 554(e)
• Licensing of import and export of natural gas under Sec.3 of the NGA, 15 U.S.C. 717b
• Approval or denial of abandonment of natural gas facilities or service under Sec.7 (b) of the NGA, 15 U.S.C. 717f (b)
• Exemptions from orders prohibiting burning natural gas or petroleum products in certain situations, 15 U.S.C. 792

Department of Transportation- Coast Guard

• Approval of construction or modification of bridges, causeways, pipelines, or other structures over, on, or under navigable waters pursuant to Section 9 or 10 of the Rivers and Harbors Act, 33 U.S.C. 401, 403, and the Bridge Act, 33 U.S.C. 491
• Marine event permits issued under authority of 33 U.S.C. 1233, found at 33 CFR 100.15

Environmental Protection Agency

• National Pollutant Discharge Elimination System (NPDES) permits and other permits for federal installations discharges, sludge runoff, aquaculture permits and all other permits pursuant to Sections 401, 402, 405,and 318 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1341, 1342, 1345, and 1328
• Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C. 9601
• Permits pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 6901
• Permits pursuant to the underground injection control program under Section 1424 of the Safe Drinking Water Act, 42 U.S.C. 300h
* Indiana has primacy for Class II injection wells
• Permits pursuant to the Clean Air Act of 1976, 42 U.S.C. 7401
• Permits pursuant to the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431

Department of Interior- U.S. Fish and Wildlife Service – 16 U.S.C. 742a

• Endangered species permits pursuant to the Endangered Species Act, 16 U.S.C. 1531
• Permits pursuant to the Migratory Bird Treaty Act, 16 U.S.C. 703
• Permits to impound water and coordination activities under the Fish and Wildlife Coordination Act, 16 U.S.C. 661
• Permits and cooperative agreements for use of lands for grazing, timber harvest, farming, and concessions, and agreements with States for operation of Service management units
• Permits and easements for rights-of-way
• Permits for the import-export of regulated wildlife and plants, including interstate shipment of injurious wildlife
• Permits for the taking or banding of migratory birds, including falcons and eagles

Department of Interior- National Park Service – 16 U.S.C. 1

• Permits for rights-of way
• Permits for scientific-collecting purposes
• Permits for special use of real property (including assets and resources or utilities)
• Agreements to permit concession operations

Nuclear Regulatory Commission

• Licensing, certification, and determination of the siting, construction, and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, 42 U.S.C. 2011, Title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5841, and the National Environmental Policy Act of 1974, 42 U.S.C. 4321

Department of Transportation- Federal Aviation Administration – 49 U.S.C. 106, 49 U.S.C. 40101, 49 U.S.C. 44501, 49 U.S.C. 44701, 49 U.S.C. 47501,

• Permits, licenses, certifications, and other approvals for construction, operation, or alteration of airports
• Allocating use of airspace or otherwise permitting changes in air traffic resulting in increases of noise pollution over sensitive areas of the coastal zone

Department of Transportation- Surface Transportation Board – 49 U.S.C. 10101

• Permission to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way)
• Permission to construct, expand, alter, or abandon railroads
• Issuing certificates for water carrier authority
• Granting exemptions from rail regulation
• Granting exemptions from motor carrier regulation
• Rail regulation- emergency service orders
• Rail regulation- competitive access

• Motor carrier regulation- Bus company through-route requirements
• Intermodal regulation- Rail-Water connections for non-contiguous domestic trade

Department of Transportation- Federal Highway Administration – 49 U.S.C. 104, 49 Appdx. U.S.C.S. 1653
• Issuing safety permits regarding highway routing of hazardous materials

Department of Transportation- Research and Special Programs Administration – 49 U.S.C. 5101
• Issuing, modifying, and terminating approvals under the Hazardous Materials Transportation Law (hazmat)
• Issuing, renewing, modifying, and terminating exemptions under hazmat
• Administrative determinations of whether state or local requirements are preempted under hazmat or are issued a waiver of preemption

Table C. Federal Assistance

Numbers refer to the Catalog of Federal Domestic Assistance Programs. Program descriptions can be found at the Catalog's website at www.gsa.gov/fdac

Department of Agriculture

10.760 Water and Waste Disposal Systems for Rural Communities (Consolidated Farm and Rural Development Act, as amended, Section 306, 7 U.S.C. 1926.)
10.766 Community Facilities Loans and Grants (Consolidated Farm and Rural Development Act, as amended, Section 306, 7 U.S.C. 1926.)
10.769 Rural Development Grants (Consolidated Farm and Rural Development Act, Section 310B, as amended, 7 U.S.C. 1932)
10.770 Water and Waste Disposal Loans and Grants (Section 306C) (Consolidated Farm and Rural Development Act, Section 306C, 7 U.S.C. 1926(c), as amended; Food, Agriculture, Conservation, and Trade Act of 1990, Title XXIII, Public Law 101-624)
10.854 Rural Economic Development Loans and Grants (Rural Electrification Act of 1936, as amended, Title III, 7 U.S.C. 930-940c.)
10.901 Resource Conservation and Development (Public Law 97-98, 95 Stat. 1213.)
10.904 Watershed Protection and Flood Prevention (Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001, 33 U.S.C. 701b)
10.906 Watershed Surveys and Planning (Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001, 33 U.S.C. 701b)

Department of Commerce

11.300 Economic Development- Grants for Public Works and Infrastructure Development (Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3131, 3132, 3135, 3171)
11.304 Economic Development- Public Works Impact Program (Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3131, 3135)
11.405 Anadromous Fish Conservation Act Program (Anadromous Fish Conservation Act of 1965, as amended, 16 U.S.C. 757a through f; Reorganization Plan No. 4, 1970)
11.407 Interjurisdictional Fisheries Act of 1986 (Interjurisdictional Fisheries Act of 1986, as amended,16 U.S.C. 4106)
11.427 Fisheries Development and Utilization Research & Development Grants & Coop Agreements (Saltonstall-Kennedy Act, as amended, 15 U.S.C. 713c-3(c))
11.463 Habitat Conservation (Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 661; Coastal Wetlands Planning, Protection, and Restoration Act, 16 U.S.C. 3951; 33 U.S.C. 1901; Department of Commerce Appropriation Act of 1995)

Department of Defense

12.100 Aquatic Plant Control, 33 U.S.C. 610
12.101 Beach Erosion Control Projects (Rivers and Harbors Act of 1962, Section 103, as amended, 33 U.S.C. 426e-g)
12.104 Flood Plain Management Services (Flood Control Act of 1960, Section 206,as amended, 33 U.S.C. 709a)
12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works (Flood Control Act of 1946, Section 14, 33 U.S.C. 701r, as amended)
12.106 Flood Control Projects (Flood Control Act of 1948, Section 205, as amended, 33 U.S.C. 701s)
12.107 Navigation Projects (Rivers and Harbors Act of 1960, Section 107, as amended, 33 U.S.C. 577)
12.108 Snagging and Clearing for Flood Control (Flood Control Act of 1937, Section 2, as amended, 33 U.S.C. 701g)
12.109 Protecting, Clearing, and Straightening Channels (Rivers and Harbors Act of 1945, Section 3, as amended, 33 U.S.C. 603a)
12.110 Planning Assistance to States (Water Resources Development Act of 1974, Section 22, as amended, 42 U.S.C. 1962d-16)
12.610 Joint Land Use Studies (Defense Authorization Act, 10 U.S.C. 2391)
12.613 Growth Management Planning Assistance (Defense Authorization Act, 10 U.S.C. 2391)

Department of Housing and Urban Development (Sections refer to the National Housing Act)

14.218 Community Development Block Grants/ Entitlement Grants (Housing and Community Development Act of 1974, Title I, as amended, 42 U.S.C. 5301-5317**)**
14.219 Community Development Block Grants/ Small Cities Grants (Housing and Community Development Act of 1974, Title I, as amended, 42 U.S.C. 5301-5317)
14.246 Community Development Block Grants/ Economic Development Initiative (Housing and Community Development Act of 1974, Sec.108(q), as amended, 42 U.S.C. 5308(q)
14.866 Revitalization of Severely Distressed Public Housing (HUD Appropriations Act of 1993, Public Law 102-389)

Department of the Interior

15.605 Sport Fish Restoration (Federal Aid in Sportfish Restoration Act of 1950, as amended, 16 U.S.C. 777-777k)
15.611 Wildlife Restoration (Federal Aid in Wildlife Restoration Act of 1937, as amended, 16 U.S.C. 669-669b, 669-669I)
15.614 Coastal Wetlands Planning, Protection, and Restoration Act (Coastal Wetlands Planning, Protection, and Restoration Act, Section 305, Title III, 16 U.S.C. 3954)
15.615 Cooperative Endangered Species Conservation Fund (Endangered Species Act of 1973, as amended, 16 U.S.C. 1531)
15.616 Clean Vessel Act Pumpout Grant Program (Clean Vessel Act of 1992, Section 5604, 33 U.S.C. 1322, note, and 16 U.S.C. 777c and 777g)
15.617 Wildlife Conservation and Appreciation (Partnerships for Wildlife Act, Title VII, Sec.7105(g), 16 U.S.C. 3744(g))
15.904 Historic Preservation Fund Grants-in-Aid (National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470)
15.916 Outdoor Recreation- Acquisition, Development, and Planning (16 U.S.C. 1-4; Land and Water Conservation Fund Act of 1965, 16 U.S.C. 460d, 460l-4 to 460l-11, as amended)
15.919 Urban Park and Recreation Recovery Program (Urban Park and Recreation Recovery Act of 1978, Title 1, 16 U.S.C. 2501-2514)

Department of Transportation

20.005 Boating Safety Financial Assistance, 46 U.S.C. 13101-13110
20.006 State Access to the Oil Spill Liability Trust Fund (Oil Pollution Act of 1990, Sec.1012(d)(1), 33 U.S.C. 2712(d)(1))
20.007 Bridge Alteration (River and Harbor Act of 1899, Section 18, 33 U.S.C. 502; Bridge Act of 1906, Sections 4 and 5, 33 U.S.C. 494-5; Act of June 21, 1940, as amended; Truman-Hobbs Act, 33 U.S.C. 511-23)
20.106 Airport Improvement Program (Public Law 103-272)
20.205 Highway Planning and Construction, 23 U.S.C.
20.219 Recreational Trails Program (Transportation Equity Act for the 21st Century, Sec. 1101(a)(7); 23 U.S.C. 104(h); 23 U.S.C. 206)
20.500 Federal Transit Capital Improvement Grants, 49 U.S.C. 5309
20.509 Public Transportation for Nonurbanized Areas, 49 U.S.C. 5311
20.514 Transit Planning and Research, 49 U.S.C. 5314(a)
20.600 State and Community Highway Safety (Highway Safety Act of 1966, as amended, 23 U.S.C. 401)
20.801 Development and Promotion of Ports and Intermodal Transportation (Merchant Marine Act of 1920, Section 8, as amended, 46 U.S.C. 867; Merchant Marine Act of 1936, Sections 209 and 212, as amended, 46 U.S.C. 1119, 1122; Section 2, Public Law 96-371; Defense Production Act of 1950, as amended, 50 Appx. U.S.C. 2061, 2062, 2071-2073, 2081, 2091-2094, 2101-2110, 2121-2123, 2131-2135, 2151-2166; Executive Order 10480; Executive Order 12656)

Environmental Protection Agency

66.001 Air Pollution Control Program Support (Clean Air Act of 1977, Section 105, as amended, Clean Air Act Amendments of 1990, 42 U.S.C. 7405)
66.419 Water Pollution Control- State and Interstate Program Support (Clean Water Act, Section 106, as amended, 33 U.S.C. 1256)
66.432 State Public Water System Supervision (Public Health Service Act, as amended, 42 U.S.C. 201; Safe Drinking Water Act, as amended, 42 U.S.C. 300f)
66.433 State Underground Water Source Protection (Safe Drinking Water Act, as amended, 42 U.S.C. 300f)
66.454 Water Quality Management Planning (Clean Water Act, Sections 205(j) and 604(b), as amended, Water Quality Act of 1987, 33 U.S.C. 1285(j) and 33 U.S.C. 1384(b))
66.456 National Estuary Program (Clean Water Act, Section 320, as amended, 33 U.S.C. 1330)
66.458 Capitalization Grants for State Revolving Funds (Clean Water Act, as amended, Water Quality Act of 1987, Sections 601-607, 205(m), 33 U.S.C. 1381-1387, 33 U.S.C. 1285 (m))
66.460 Non-Point Source Implementation Grants (Clean Water Act, Section 319(h), 33 U.S.C. 1329(h))
66.461 Wetlands Protection- Development Grants (Clean Water Act, Section 104(b)(3), as amended, 33 U.S.C. 1254(b)(3))
66.463 National Pollutant Discharge Elimination System (NPDES) Related State Program Grants (Clean Water Act, Section

104(b)(3), as amended, 33 U.S.C. 1254(b)(3))
66.468 Capitalization Grants for Drinking Water State Revolving Fund (Safe Drinking Water Act Amendments of 1996, Section 130, 42 U.S.C. 300 j-12)
66.469 Great Lakes Program (Clean Water Act, Sections 104 and 118, 33 U.S.C. 1254, 33 U.S.C. 1268)
66.700 Consolidated Pesticide Enforcement Cooperative Agreements (Federal Insecticide, Fungicide, and Rodenticide Act, Section 23, as amended, 7 U.S.C. 136u)
66.701 Toxic Substances Compliance Monitoring Cooperative Agreements (Toxic Substances Control Act, Sections 28 and 404(g), as amended, 15 U.S.C. 2627 and 2684(g))
66.708 Pollution Prevention Grants Program (Pollution Prevention Act of 1990, Section 6605, 42 U.S.C. 13104)
66.801 Hazardous Waste Management State Program Support (Solid Waste Disposal Act, Section 3011, as amended, Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C. 6931)
66.802 Superfund State Site-Specific Cooperative Agreements (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, Section 104, as amended, Superfund Amendments and Reauthorization Act (SARA) of 1986, as amended, 42 U.S.C. 9604)
66.804 State Underground Storage Tanks Program (Solid Waste Disposal Act, Section 2007(f)(2), as amended, and Section 8001(a);Resource Conservation and Recovery Act (RCRA) of 1976, as amended, Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6901 et seq.)
66.805 Leaking Underground Storage Tank Trust Fund Program (Solid Waste Disposal Act, Section 9003(h)(7), as amended; Section 8001(a); Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. 6901 et seq.; Superfund Amendments and Reauthorization Act (SARA) of 1986, as amended, 42 U.S.C. 9601 et seq.)
66.807 Superfund Innovative Technology Evaluation Program (SITE) (Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA) of 1980, Sec 311(b), as amended, Superfund Amendments Reauthorization Act of 1986, as amended, 42 U.S.C. 9660(b)
66.808 Solid Waste Management Assistance (Solid Waste Disposal Act, Section 8001, as amended, Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. 6981)
66.809 Superfund State Core Program Cooperative Agreements (CERCLA, as amd., 42 U.S.C. 9601)
66.810 CEPP Technical Assistance Grants Program (Clean Air Act, Secs.103(b)(3),112(L)(4), 42 U.S.C. 7403(b)(3), 7412(L)(4); Toxic Substances Control Act, Secs.10(a),28(d), 15 U.S.C. 2609(a), 2627(d))

Department of Energy (DOE)

81.041 State Energy Program (Energy Policy and Conservation Act, Title III, Sections 361-366, Part C, 42 U.S.C. 6321-6326; Dept. of Energy Organization Act of 1977, as amended, 42 U.S.C. 7101; National Energy Conservation Policy Act of 1978, Public Law 95-619, Public Law 101-440; Balanced Budget Down Payment Act II of 1996, Public Law 104-134)

Federal Emergency Management Agency (FEMA)

83.505 State Disaster Preparedness Grants
83.534 Emergency Management- State and Local Assistance (Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Stafford Act, Title VI, Sections 611 and 613, as amended, 42 U.S.C. 5196 and 5196b)
83.536 Flood Mitigation Assistance (National Flood Insurance Reform Act of 1994, Title V, Sections 553 and 554, 42 U.S.C. 4104c, 4104d, 4017)

Department of Health and Human Services (HHS)

93.887 Project Grants for Renovation or Construction of Non-Acute Health Care Facilities (Public Health Service Act, Section 1610 (b), 42 U.S.C. 300r (b))

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
OGDEN DUNES VOLUNTEER FIRE DEPARTMENT INC.
DOCKET NO. 29-2002-0179

PROPOSED ORDER

The letter denying Petitioner's raffle license request was dated on March 18, 2002 and was received by the Petitioner on March 26, 2002.The Petitioner, was represented by Eric D. Kurtz, Fire Chief. Attorney, Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

FINDINGS OF FACTS

1) Petitioner wished to conduct a raffle on March 9, 2002.

2) The Petitioner's charity gaming application Form CG-1 (Indiana Charity Gaming Qualification Application) was received on February 13, 2002.
3) Petitioner's charity gaming application Form CG-3 (Indiana Department of Revenue Single Event License Application) was received on February 13, 2002.
4) The Indiana Department of Revenue Charity Gaming Section received the necessary information on March 13, 2002 to complete the qualification process.
5) Petitioner received a letter of qualification dated March 14, 2002 on March 26, 2002.This was after the date of Petitioner's scheduled event as indicated on Form CG-3.
6) Form CG-3 states in bold letters: "**You must file this application at least six (6) weeks before your scheduled event**."
7) The letter of denial was dated on March 18, 2002 and was received by the Petitioner on March 26, 2002.
8) The Petitioner applied for and was subsequently issued a license and an event was held on March 8, 2003.

STATEMENT OF LAW

1) IC 4-32-9-2 provides, "Except as provided in section 3 of this chapter, a qualified organization must obtain a license from the department to conduct an allowable event."
2) IC 4-32-9-4 provides, "Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department…"
3) There is no provision in IC 4-32 et.seq., that allows the Department to grant a license retroactively.

CONCLUSIONS OF LAW

1) The fact that information needed by the Department in order to qualify the Petitioner as a qualified organization was not received until after the date of the proposed event makes the issue moot.
2) Petitioner's appeal of the denial of a single event license is considered "moot" because it no longer presents a justiciable controversy and the issues involved have become academic or dead.
3) This appeal raised issues that have already been resolved and are not entitled to judicial intervention.
4) This issues involved in Petitioner's original appeal are not recurring ones and cannot be raised again between the parties since the information needed by the Department in order to qualify the Petitioner as a qualified organization was not received until after the date of the proposed event.

PROPOSED ORDER

The Administrative Law Judge orders the following:
Petitioner's appeal is dismissed pursuant to IC 4-21.5.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: December 18, 2003

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
ANDERSON P.A.L. CLUB INCORPORATED
DOCKET NO. 29-2003-0195

PROPOSED ORDER

The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Anderson P.A.L. Club Incorporated. The Petitioner was assessed civil penalties of eleven thousand dollars ($11,000), and its license was revoked. The Petitioner was represented by John N. Shanks II of Ayres, Carr & Sullivan P.C., 338 Historical W. 8th Street, Anderson, IN 46016. Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

FINDINGS OF FACTS

1) The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Anderson P.A.L. Club Incorporated on January 29, 2003.
2) As a result of the investigation, on May 15, 2003, the Petitioner was assessed civil penalties of eleven thousand dollars

($11,000), and its license was revoked pursuant to 45 IAC 18-6-3.
3) Petitioner protested the Department's proposed actions on May 19, 2003.
4) The Department acknowledged the Petitioner's appeal in a letter dated May 20, 2003.
5) Pursuant to IC 4-21.5-3-1, notice was given to Petitioner on September 4, 2003 regarding a possible dismissal of the appeal if no response was received by the Department on or before November 7, 2003.
6) Petitioner has failed to respond to the Department's correspondence.

STATEMENT OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to:
(1) file a responsive pleading required by statute or rule;
(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;
the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

CONCLUSIONS OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
2) The Petitioner's failure to respond to the Department is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

PROPOSED ORDER

The Administrative Law Judge orders the following:
Petitioner's appeal is dismissed pursuant to IC 4-21.5-3-24.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: December 2, 2003

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
ATLAS FOUNDATION LIMITED
DOCKET NO. 29-2003-0335

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Wednesday, October 15, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Atlas Foundation Limited, was represented by its President Glen Voris. Steve Carpenter appeared on behalf of the

Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and its license was suspended for a period of three (3) years. The Petitioner protested in a timely manner.

SUMMARY OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on August 7, 2003.

2) According to the Department's letter dated August 13, 2003, the Criminal Investigation Division (CID) found, "Mr. Calhoun offered to operate Atlas Foundation LTD's charity gaming events on behalf of the organization and the organization accepted Mr. Calhoun's offer. According to the CID report, Mr. Calhoun spent his money on supplies for the gaming events. It was originally intended that Mr. Calhoun would operate the organization's bingo events under the direction of the board of directors. However, in reality, Mr. Calhoun assumed complete control of the organization's bingo events. Mr. Calhoun did not provide any accounting to the organization's board of directors and utilized his family members and friends to operate the organization's bingo events. On July 10, 2003, the organization's board of directors agreed to remove John Calhoun as treasurer of the organization and from any involvement in the organization's bingo events. The Fort Wayne City Police were present to ensure a smooth transition. According to the board of director's minutes, while John Calhoun operated the bingo events, individuals not listed as operators or workers were involved; also, the workers and operators were accepting tips from patrons. On August 1, 2003, the organization's board of directors agreed to voluntarily surrender the organization's bingo license..."

3) On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and its license was suspended for a period of three (3) years.

FINDINGS OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Petitioner on August 1, 2003. (Record at 8).

2) According to the Department's Criminal Investigation Division Agent, the Petitioner had entered into an agreement with John Calhoun to operate its charitable gaming activities. (Record at 10).

3) John Calhoun was a member of the Petitioner's organization. (Record at 14).

4) Petitioner's representative stated during the hearing, "Earlier that fall John Calhoun became involved and he brought all his--…and John showed up at some of these events with his people and they become members. And in the meantime I learned that John had run bingo, was successful at bingo and he was helpful with everything…" (Record at 16).

5) Petitioner's representative talking about the Petitioner' new location for conducting its charity gaming stated, "John Calhoun found the location." (Record at 16).

6) Petitioner's representative speaking about his role in Petitioner' charity gaming operations contends, "I knew right then I had lost the game. I knew at that time in the following week John changed the locks on me and I was an outsider." (Record at 19).

7) Petitioner's representative opines, "He just simply wouldn't leave, he just wouldn't leave. And so I went to the police department and got a policeman to be there on Sunday night and what we were going to do at the break time is give John this minutes of the meeting here simply telling the board of directors has relieved him of all his duties, he is no longer treasurer."(Record at 21, See also Petitioner's Exhibit #2).

8) Petitioner continued to use Mr. Calhoun to run its charity gaming operation. Petitioner's representative stated, "…I met with John Monday morning and John said if I could stay another month or six weeks or something like that then we could have a smooth transition. And so I thought, well, that's my way of getting the bingo up and running without being stripped of everything because they had been running stuff out the back door, I don't know what they were taking out. And so…we agreed that John would stay on for a period of time…"(Record at 23).

9) Questioning the Petitioner's representative about Mr. Calhoun's involvement with the Petitioner's charity gaming is as follows:

MR. CARPENTER: Did he or did he not offer to the Atlas Foundation to operate their bingo?

MR. VORIS: Yes.

MR. CARPENTER: You also heard Ms. Klinkose say that the Atlas Foundation accepted that offer, is that true? He ran the bingo, didn't he?

MR. VORIS: Oh, yes.

MR. CARPENTER: So you accepted the offer, correct?

MR. VORIS: Yes.
MR. CARPENTER: Okay. You also stated of Ms Klinkose stated that Mr. Calhoun purchased the gaming supplies; is that true?
MR. VORIS: Yeah, because I didn't--
MR. CARPENTER: Isn't it also true that Mr. Voris made the decisions to operate the game including, but not limited to, hiring and firing the workers, resolving disputes, and handling all the money?
MR. VORIS: We has a pool of volunteer—
MR. CARPENTER: Did he do those things, yes or no, sir?
MR. VORIS: He did yes.
(Record at 56).

10) The Department then notified Petitioner by letter on August 13, 2003 that its Indiana Charity Gaming License was suspended for a period of three (3) years and assessed one thousand dollars ($1,000).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
5) IC 4-32-9-15 **A qualified organization may not** contract or otherwise **enter into an agreement with an individual, a corporation, a partnership, a limited liability company, or other association to conduct an allowable event for the benefit of the organization. A qualified organization shall use only operators and workers meeting the requirements of this chapter to manage and conduct an allowable event**." (Emphasis added).
6) IC 4-32-9-17 states, "A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article…"
7) IC 4-32-9-17 further states, "…A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department..."
8) According to IC 4-32-9-17, "…The department shall, by rule, require a qualified organization to deposit funds received from an allowable event in a separate and segregated account set up for that purpose…"
9) Pursuant to IC 4-32-9-17 "…**All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account**."(Emphasis added).
10) IC 4-32-9-23 provides, "An operator or a worker may not be a person who has been convicted of or entered a plea of nolo contendere to a felony committed in the preceding ten (10) years, regardless of the adjudication, unless the department determines that: (1) the person has been pardoned or the person's civil rights have been restored; or (2) subsequent to the conviction or entry of the plea the person has engaged in the kind of good citizenship that would reflect well upon the integrity of the qualified organization and the department."
11) IC 4-32-9-27 states, "An operator or a worker may not directly of indirectly participate, other than in a capacity as operator or worker, in an allowable event…"
12) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
13) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
14) IC 4-32-9-25 states, "Except as provided in subsection (b), an operator or a worker may not receive remuneration…"
15) IC 4-32-12-2 states, "The department **may impose** upon a qualified organization or an individual the following **civil penalties**: (1) Not more than one thousand dollars ($1,000) for the first violation. (2) Not more than two thousand five hundred dollars ($2,500) for the second violation. (3) Not more than five thousand dollars ($5,000) for each additional violation." (Emphasis added).
16) IC 4-32-12-1(a) provides in pertinent part, "The Department may suspend… an individual …for any of the following: (1) Violation of a provision of this article or of a rule of the department..."
17) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
(1) Suspend or revoke the license.

(2) Lengthen a period of suspension of the license.
(3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
(4) Impose an additional civil penalty of not more than one hundred dollars ($100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

1) On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and its license was suspended for a period of three (3) years.
2) It is clear from the testimony of Petitioner's representative that Mr. Calhoun was retained by the Petitioner to operate its charity gaming in violation of IC 4-32-9-15.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:
The Petitioner's appeal is denied.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____
Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
AMVETS POST #55, INC.
30 BIRCH DRIVE
YODER, IN 46798
DOCKET NO. 29-2003-0419

PROPOSED ORDER

1) The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Petitioner on August 28, 2003.
2) As a result of the investigation, on September 29, 2003, the Petitioner's application to engage in charity gaming was denied.
3) Petitioner appealed the Department's proposed actions on October 7, 2003.
4) The Department acknowledged the Petitioner's appeal in a letter dated October 10, 2003.
5) Petitioner's counsel filed a memorandum in support of Petitioner's appeal on November 14, 2003.
6) The Petitioner, by counsel, withdrew its appeal on December 23, 2003.
The Administrative Law Judge orders the following:
Petitioner's appeal is hereby dismissed.
Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: December 31, 2003

_____
Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

04970077.LOF

LETTER OF FINDINGS NUMBER: 97-0077
Sales and Use Tax
For The Tax Periods: 1993 through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Use Tax – Manufacturing Exemption: Lab and Water Treatment Chemicals

Authority: IC 6-2.5-3-2, IC 6-8.1-5-1, 45 IAC 2.2-5-70, 45 IAC 2.2-5-8.

Taxpayer protests amount of use tax assessed on its purchase of water treatment chemicals.

II. Use Tax – Manufacturing Exemption: Equipment

Authority: IC 6-2.5-3-2, IC 6-2.5-5-3, 45 IAC 2.2-5-8.

Taxpayer protests use tax assessed on its scales, balers and conveyers.

STATEMENT OF FACTS

Taxpayer is engaged in the business of recycling of waste paper. The paper is collected and processed into packaged rolls for use by its customers. Additional facts will be provided as needed.

I. Use Tax – Manufacturing Equipment Exemption: Water Treatment Chemicals

DISCUSSION

During the audit, Taxpayer was assessed use tax on their purchases of lab and water treatment items. Taxpayer states that the purchases are exempt because they are used to comply with local environmental quality standards and/or that the supplies are used in the production process.

Indiana imposes "an excise tax, known as the use tax, on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or the retail merchant making that transaction." IC 6-2.5-3-2.

Taxpayer contends that 90% of the water is discharged into the local sewer system and is not re-used and the remaining 10% is treated and re-utilized in the pulping or production process.

Taxpayer claims that the 90% of the water which is discharged into the municipal sewer system is required to meet certain specifications. In order to ensure the water meets these specifications the water must be treated and tested. Pursuant to 45 IAC 2.2-5-70:

> The state gross retail tax does not apply to sales of tangible personal property which constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominately used and acquired for the purpose of complying with any state, local or federal environmental quality statutes, regulations or standards; and the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

Taxpayer goes on to argue that the remaining 10% of the water is re-utilized after testing and treatment. They state that the water is constantly processed and re-introduced into the pulping process and if it were not treated could not be used in the production process. 45 IAC 2.2-5-8(c) states:

> the state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment that are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

The audit notes that the testing of the water is performed after the production process is complete and before the water is used again in the first operation. The water is not used in production at the time it is being treated. Rather, the treatment takes place prior to its use. Consequently, it is not directly used in the direct production of the recycled paper. In addition, Taxpayer does not provide documentation verifying how they came up with their percentages used in their breakdown. "The notice of proposed assessment is prima facie evidence that the department's claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1 (emphasis added). Taxpayer's protest must be denied.

FINDING

Taxpayer's protest is denied.

II. Use Tax – Manufacturing Exemption: Equipment

DISCUSSION

Taxpayer protests the assessment of use tax upon their scales, compactor, baler and upender/conveyor system. The auditor

assessed these items after determining that they were either used before or after the production process.

Taxpayer contends that these items should be exempt from the gross retail tax in accordance with 45 IAC 2.2-5-8.

As stated above, "an excise tax, known as the use tax, on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or the retail merchant making that transaction." IC 6-2.5-3-2.

However, an exemption is allowed for certain tools used in the production process. IC 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

More specifically, 45 IAC 2.2-5-8(c) states:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment that are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

In addition, 45 IAC 2.2-5-8(d) states:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

Taxpayer argues that the production process begins with the weighing of the raw waste paper used the system. The scale and foundation are utilized to ensure that the proper amounts of waste paper are collected for introduction into the system. Taxpayer states that the scales measure the cardboard and waste to achieve the proper percentages when it is boiled. Taxpayer compares these scales to the example of exempt items described in 45 IAC 2.2-5-8(c)(2)(G). There, the regulation states that "[a]n automated scale process which measures quantities of raw aluminum for use in the next production step of the casting process in the foundry" is exempt. Id. Taxpayer argues that the introduction of the raw waste materials to be boiled is similar to the above referenced example.

Taxpayer also argues that the compactor/conveyor and baler is used to compress loose waste paper into a dense format for processing. The recycling system requires large, but controlled quantities of specific types of waste paper. Taxpayer goes on to state that if the waste paper is not in a dense compressed form or a "baled" form it cannot be introduced at a sufficient rate and the equipment is not designed to handle loose, uncompressed waste paper.

Finally, Taxpayer argues that the upending and movement of the banded rolls or recycled paper is also an essential and integral step in processing of the final product. Taxpayer notes that the upending and conveyance of paper rolls occurs within the plant after the rolls are banded, but prior to the final wrapping. The upender/conveyor helps move the rolls in order that they may be wrapped and labeled prior to shipping.

The Department finds that the process at issue begins with the first step in altering the material to its completed form, which is the boiling of the waste material. The regulation cited by taxpayer references a weighing and measuring step within an integrated process, not prior to the process starting. The Department also finds that the production process ends with the banding of the rolls, a point that the production has altered the item to its completed form, including required packaging.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220010123.LOF

LETTER OF FINDINGS: 01-0123
Indiana Gross Income Tax
For the Years 1997 and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Received from Computer Service Maintenance Contracts – High Rate Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-4; IC 6-2.1-2-4(4); IC 6-2.1-2-5; 45 IAC 1-1-121.

Taxpayer argues that the Department of Revenue (Department) erred when it determined that money taxpayer received from

entering into and performing service maintenance agreements with Indiana customers was subject to Indiana's gross income tax at the high rate.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which sells, installs, and services computer memory and computer peripherals. Along with selling computer equipment, taxpayer offers customers maintenance contracts for service work only. Taxpayer received money from service contracts with Indiana customers.

The Department conducted an audit review of taxpayer's business records and tax returns. The final audit report concluded that taxpayer owed Indiana gross income tax on the money received from the service contracts with Indiana customers. The tax was assessed at the high rate.

On December 5, 2000, taxpayer submitted a protest letter challenging the assessment of gross income tax at the high rate. Despite repeated requests to do so, taxpayer declined the opportunity to take part in an administrative hearing or to supply additional information supplementing the initial protest letter. Accordingly, this Letter of Findings was written based upon the information contained with the audit report and within taxpayer's original December 2000 protest letter.

DISCUSSION

I. Income Received from Computer Service Maintenance Contracts – High Rate Gross Income Tax.

IC 6-2.1-2-2(a)(1) imposes a gross income tax on the "entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana...." The gross income tax is also imposed on a non-resident taxpayer who receives "gross income derived from activities or businesses or any other sources within Indiana...." IC 6-2.1-2-2(a)(2). The gross income tax is imposed at two rates, a "high rate" of 1.2 percent and a "low rate" of.3 percent. IC 6-2.1-2-3 "The rate of tax is determined by the type of transaction from which the taxable gross income is received." IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and certain other business activities are taxed at the high rate. IC 6-2.1-2-5.

The issue is whether the money received from entering into maintenance contracts for the performance of services is subject to Indiana's Gross Income Tax at the high rate.

45 IAC 1-1-121 (in effect at the time taxpayer received money from these service contracts) provides in relevant part as follows. "Gross income derived from the performance of a contract or service within Indiana is subject to gross income tax."

From the information available, it is apparent that the service contracts here at issue were just what they say; these contracts were arrangements by which taxpayer agreed to provide computer services to Indiana customers. These agreements do not include the provision of parts and equipment which would have potentially brought the agreements with the "selling at retail provision" found in IC 6-2.1-2-4(4). Because the service contracts were for the unalloyed provision of computer services, the money received from these agreements does not fall under the "low rate" provisions of IC 6-2.1-2-4.

Therefore, because the income received was attributable to services provided for Indiana customers, that income is subject to imposition of the state's gross income tax at the high rate as provided for under IC 6-2.1-2-4(4), IC 6-2.1-2-5, and 45 IAC 1-1-121.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420020391.LOF

LETTER OF FINDINGS NUMBER: 02-0391
Sales and Use Tax
For the Years 1998, 1999, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax- Retail Sales

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1, IC 2.5-4-4, IC 6-2.5-5-26 (b), 45 IAC 2.2-5-58, Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994), Raintree Friends Housing v. Indiana Department of Revenue, 667 N.E.2d 810 (Ind. Tax 1996), Black's Law Dictionary 213 (5th ed. 1979).

The taxpayer protests the assessment of sales tax on certain retail sales.

II. Sales and Use Tax-Capital Assets

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-25 (a), 45 IAC 2.2-3-8, Sales Tax Division Information Bulletin #10 Revised February 10, 1986.

The taxpayer protests the assessment of use tax on certain capital assets.

III. Sales and Use Tax-Supplies

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-25 (a), Sales Tax Division Information Bulletin #10 Revised February 10, 1986.

The taxpayer protests the assessment of use tax on certain supplies.

IV. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the assessment of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is a not-for-profit corporation that operates a living museum with demonstrations and a recreation of a turn-of-the-century village and farmstead. The corporation also operates a hotel adjacent to, and affiliated with, the living museum. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest and penalty. The taxpayer protested the assessment and a hearing was held.

I. Sales and Use Tax- Retail Sales

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Indiana imposes an excise tax, the sales tax, on retail sales of tangible personal property. IC 6-2.5-2-1 (a). The rental of a hotel room and booths for less than thirty (30) is defined as a retail sale subject to the sales tax. IC 2.5-4-4. Purchasers are liable for the tax that the retail merchants collect and remit to the state. IC 6-2.5-2-1(b). Sales by not-for-profit corporations are exempt from the sales tax if "the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes,..." IC 6-2.5-5-26 (b). It is established law that all tax exemptions must be strictly construed against taxpayers. Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994).

Throughout the year, the taxpayer operates a hotel, gift shops, a general store, a refreshment stand and a farmhouse that sells prepared meals. The taxpayer provided the department a trial balance for 1998, 1999, and 2000. Each account was examined and it was determined from this list what accounts sales tax should have been collected on. The accounts included sales tax collected, innkeeper tax collected, exempt sales for which the taxpayer had exemption certificates for room rental at the Inn and the fifteen (15) percent of sales such as jams and jellies that were allowed as exempt from the General Store. Credit was also given for the sales tax remitted. These amounts were deducted from total taxable sales to arrive at additional taxable sales.

The taxpayer protested the sales tax imposed on its hotel room rentals, vending machine sales, consignment sales, penny machine sales, pony feeding machine sales, booth rentals and booth utility fees. The taxpayer argued that these sales were exempt from the imposition of the sales tax pursuant to the exemption granted not-for-profit corporations.

The Indiana Tax Court dealt with the not-for-profit exemptions from income taxes and sales tax in the case Raintree Friends Housing v. Indiana Department of Revenue, 667 N.E.2d 810 (Ind. Tax 1996). In this case, the Court found that a housing corporation that provided retirement housing qualified for the charitable purposes exemptions from the gross income tax, adjusted gross income tax, supplemental net income tax, and sales tax. Since the tax statute does not define the term "charitable," the Court looked to the definition found in Black's Law Dictionary 213 (5th ed. 1979) as follows:

Charity is broadly defined as:

A gift for, or institution engaged in, public benevolent purposes. [It is a}n attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

The taxpayer does provide the benevolent service of educating people about a turn of the century Indiana farming village. The education of individuals about the history of Indiana benefits all of society. Further, the taxpayer does not gain personally from the provision of these educational services. The taxpayer's activities meet the definition of charitable as did the retirement center in the Raintree Case. Therefore, the taxpayer's sales that are intended to and do provide this beneficial and educational service qualify for the not-for-profit charitable purpose exemption from the sales tax.

45 IAC 2.2-5-58 discusses the application of sales tax to retail sales made by qualified not-for-profit organizations as follows:

(a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.

(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:

(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural or religious purpose of the qualified not-for-profit organization.

-EXAMPLE-

(1) The sale of textbooks and supplies by a parochial, public or private not-for-profit school is exempt if made to students of the school in grades one through twelve. Such sales are primarily intended to further the educational purposes of the school.

(2) The sale of bibles, choir robes and prayer books by a religious organization is exempt. Such sales are primarily intended to further the religious purposes of the organization.

(3) The sale of meals by an art gallery is taxable. The meals are intended primarily for the convenience of visitors.

(The sale of textbooks and other educational materials by a secretarial school which is operated for profit is taxable. A profit-making educational enterprise is not a qualified not-for-profit organization under this regulation.

(5) The sale of greeting cards by a church bookstore is taxable. Such sales are not primarily intended to further the religious purposes of the organization.

Not-for-profit status as a charitable corporation does not automatically qualify a corporation for charitable purpose exemption on all sales. Paragraph 2 (c) limits the exemption to those sales that will further the charitable and educational purposes of the not-for-profit corporation.

Feeding the ponies gives visitors the opportunity to engage in an activity appropriate to the time period of taxpayer's facility. This active participation of a visitor in the time specific activity furthers the visitor's knowledge and understanding of a village and farm at the turn of the century. The vending machine sale of pony food is analogous to the exempt sales in example 2. This sale, upon which sales tax was imposed, meets the test of being directly related to the educational and charitable purposes of the taxpayer.

The taxed sources of revenue include income from refreshment stands, product sales in the general store, hotel revenues, product sales outside the general store but within the village and the penny machine. While handmade dolls, candles, vending machine revenues and other sales taxed by the department are appropriate to the taxpayer's setting, their sale does not further the educational not-for-profit purpose of the taxpayer. These activities are not substantially related to the taxpayer's educational purpose. Therefore, these protested sales are most like the taxable sales of greeting cards by a church bookstore listed in example 5. Except for the sales of pony feed, the taxpayer's sales upon which sales tax was imposed do not directly further the taxpayer's educational and charitable purposes.

FINDING

The taxpayer's protest is sustained as to the imposition of sales tax on the vending machine sales of pony food. The remainder of the taxpayer's protests to the imposition of sales tax is denied.

II. Sales and Use Tax-Capital Assets

DISCUSSION

During the tax period, the taxpayer had several structures constructed. No sales tax was paid on the materials used in these building projects. The audit assessed use tax on the materials used in the construction of these capital assets. The taxpayer protested the assessments on the materials used in the construction of the Chautauqua Pavilion, the fixtures in the Chatauqua Pavilion and the materials used in building a Comfort Station on the basis that these capital assets further the taxpayer's exempt purpose.

Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana unless the sales tax is paid on the transaction. IC 6-2.5-3-2 (a).

The application of the use tax as it pertains to materials used in construction projects is clarified at 45 IAC 2.2-3-8 as follows:

(a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchaser or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt.

Exemption from the use tax is granted to property used by qualified not-for-profit organizations under certain conditions at IC 6-2.5-5-25 (a) as follows:

Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

(a) is an organization which is granted a gross income tax exemption under IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22;

(2) primarily used the property or service to carry on or to raise money to carry on the not-for-profit purpose for which it receives the gross income tax exemption; and

(3) is not an organization operated predominantly for social purposes.

Sales Tax Division Information Bulletin #10 Revised February 10, 1986 deals with the exemption of not-for-profit corporation purchases for its own use from the use tax as follows:

1. In order to qualify for sales tax exemption on purchases as a not-for-profit organization the following conditions must prevail:

(a) The organization must be named or described in IC 6-2.1-3-19, 6-2.1-3-20, 6-2.1-3-21 or 6-2.1-3-22. This includes not-for-profit organizations organized and operated exclusively for one or more of the following purposes... Educational....

(c) The organization is not operated predominantly for social purposes.

(d) In order for a purchase by a not-for-profit organization to qualify for exemption, the article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodgings, are not eligible for exemption. Purchases used for social purposes are never exempt.

The Pavilion and Comfort Station were both built in the village area of the taxpayer's operations. The Pavilion is covered with a cement floor that can be enclosed in inclement weather. The Comfort Station is a restroom facility in the village. These two facilities clearly meet the first three cited requirements to qualify for exemption. The issue is whether or not they meet the fourth requirement, that they are used for the "same purpose as that for which the organization is being exempted." School and other groups use it as a gathering and meeting place while in the village to further their understanding of a turn of the century village. The Comfort Station is also utilized by persons engaged in educational activities in the village. The use of these facilities and their fixtures further the exempt purpose, education, of the taxpayer. Therefore, the tangible personal property used in the construction of the Pavilion and the Comfort Station is exempt from the use tax.

FINDING

The taxpayer's protest to the assessments of use tax on materials used in the construction of the Pavilion, its fixtures, and the Comfort Station is sustained.

III. Sales and Use Tax-Supplies

DISCUSSION

Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana unless the sales tax is paid on the transaction. IC 6-2.5-3-2 (a). Exemption from the use tax is granted to property used by qualified not-for-profit organizations under certain conditions at IC 6-2.5-5-25 (a) and Sales Tax Division Information Bulletin #10 Revised February 10, 1986 as cited in the discussion of the taxpayer's use tax liability on materials used in the construction of capital assets.

During the audit period, the taxpayer did not pay sales tax when it purchased supplies for the operation of the village, farmstead and inn. The department assessed use tax on the use of these supplies and the taxpayer protested this assessment.. The taxpayer divided its protest into four categories: 100% village use; 100% use for production of membership mailings, promotions and related activities; proportionate uses for the inn and the village; and 100% inn use. The taxpayer meets the first three criteria for exemption. The issue to be determined is whether the taxpayer's purchase of supplies in the various categories further the taxpayer's educational purpose.

The supplies used 100 % in the village and for membership needs include such items as repair of village buildings, rock for village roadways, an antique carousel, trash bags, admission wrist bands, and bunting for decorations. The use of these items helps to maintain the village and add to the historical and educational experience. The supplies used in the membership area add to the member's utilization of the village and educational experiences there. Supplies purchased for use in these categories are exempt from the use tax.

The inn is a related proprietary business that doesn't further the exempt educational experience of the visitors. As such, supplies used at the inn are subject to the imposition of the use tax.

The last category, supplies that were purchased in bulk and a portion used in the village and a portion used in the inn are subject to the use tax to the extent they were used in the inn for the non-exempt purpose.

FINDING

The taxpayer's protest to the imposition of use tax on supplies is sustained to the extent the supplies were used in the village or for membership purposes. The taxpayer's protest to the imposition of use tax on supplies used in the inn is denied.

IV. Tax Administration-Penalty

DISCUSSION

The taxpayer's final protest concerns the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Negligence is defined at 45 IAC 15-11-2(b) as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2 (c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed... " The taxpayer presented substantial evidence showing that it met this burden. The negligence penalty does not apply in this situation.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220020407.LOF

LETTER OF FINDINGS NUMBER: 02-0407
Corporate Income Tax
For the Years 1998-2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2(a)(2), 45 IAC 1.1-2-5(f)(2).

The taxpayer protests the imposition of tax on certain income.

II. Tax Administration- Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer sold direct broadcasting services (DBS) to customers in Indiana. The DBS services consisted of programming that was first collected by an affiliate of the taxpayer from numerous providers at "uplink" centers in states other than Indiana. At the uplink centers, sophisticated computer hardware and software were used to encrypt and reformat the signals. The signal was then transmitted to various satellites owned by one of taxpayer's affiliates. The satellites transmitted the programming signals to customers throughout the Untied States, including Indiana. The taxpayer sold its services primarily through independent retailers. These retailers solicited orders from potential customers and obtained approval of such customers from sales centers located outside of Indiana. Upon acceptance of his or her order, the customer may personally install or utilize a contractor affiliated with the retailer to install the satellite receiver and "set top" box at the customer's residence. In such instances, the independent retailers received the necessary equipment directly from manufacturers. The taxpayer never acquired title to such equipment. In the recent past, the taxpayer sold its services directly to customers, complementing the sales by retailers. The taxpayer consummated all such direct sales from sales centers located outside Indiana. Until recently, all of the taxpayer's customers were required to purchase the equipment when they initiated programming service, and thereafter, retained title to the equipment. In approximately mid-1999, the taxpayer acquired the assets of a competitor, including that competitor's Indiana customers. Because certain of those customers had leased their equipment, the taxpayer allowed these customers to continue to lease the equipment after the acquisition. During the tax period, all the taxpayer's employees and offices were located outside Indiana. The taxpayer's records indicate that the company may have stored a small amount of inventory in Indiana in facilities owned by others.

After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," determined that there was no additional gross income tax liability for 1998 and assessed additional gross income tax, interest, and penalty for 1999 and 2000. The taxpayer protested the assessment and penalty. A hearing was held and this Letter of Findings results.

I. Gross Income Tax-Imposition of Tax

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Indiana imposes a gross income tax on the "taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." IC 6-2.1-2-2(a)(2). The taxpayer contends that since its gross income in 1999 and 2000 was derived in the same manner as the 1998 nontaxable income, the 1999 and 2000 income is also not subject to Indiana gross income tax.

The distinction lies in the regulation promulgated by the department and effective as of January 1, 1999 that clarifies the department's interpretation of the gross income tax for the telecommunications industry. The definition of "services performed within Indiana," for the telecommunications industry is found at 45 IAC 1.1-2-5(f)(2) as follows:

> ...sale of telecommunications, including telephone, telegraph, and non-cable television, if the telecommunications originate or terminate in Indiana and are charged to an Indiana address, and the charges are not taxable under the laws of another state.

The taxpayer and department agree that the taxpayer is selling telecommunications that are received in Indiana and charged to an Indiana address. The taxpayer contends, however, that the income received from Indiana is taxable under the laws of California and Colorado. To substantiate this contention, the taxpayer submitted copies of federal tax returns, California tax returns, and Colorado tax returns. Those returns indicate that in California and Colorado the taxpayer pays tax on less than fifty percent (50%) of its total federal income. This does not satisfy the taxpayer's burden of proving that it is properly subject to tax in California and Colorado on the income derived from its Indiana customers.

The taxpayer also argues that the regulation is unconstitutional. An administrative hearing is not the proper forum to determine the constitutionality of an administrative regulation.

FINDING

The taxpayer's protest is denied.

II. Tax Administration- Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer ignored the listed regulations and failed to report its income as required by said regulation. This failure to follow department's instructions constitutes negligence.

FINDING

The taxpayer's protest to the imposition of the penalty is denied.

DEPARTMENT OF STATE REVENUE

0220020408.LOF

LETTER OF FINDINGS NUMBER: 02-0408
Income Tax
For the Years 1996- 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Income Tax-Unrelated Business Income

The taxpayer protests the assessment of tax on certain income.

Authority: 26 IRC Sec. 513, IC 6-8.1-5-1 (b), IC 6-2.1-2-2, IC 6-3-8-1, IC 6-3-2-1, IC 6-2.1-3-20(a), IC 6-3-2-2.8, IC 6-3-8-5, IC 6-2.1-3-23 and IC 6-3-2-3.1, Black's Law Dictionary 213 (5th ed. 1979), Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994), Raintree Friends Housing v. Indiana Department of Revenue, 667 N.E.2d 810 (Ind. Tax 1996).

II. Tax Administration-Penalty

The taxpayer protests the assessment of the ten per cent penalty.

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

STATEMENT OF FACTS

The taxpayer is a not-for-profit corporation that operates a living museum with demonstrations and a recreation of a turn-of-the-century village and farmstead. The corporation also operates a hotel adjacent to and affiliated with the living museum. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional gross income tax, adjusted gross income tax, supplemental net income tax, interest and penalty. The taxpayer protested the assessment and a hearing was held.

I. Income Tax-Unrelated Business Income

DISCUSSION

The taxpayer considered all of its income exempt from gross income tax and adjusted gross income tax due to its not-for-profit status. The department assessed gross and adjusted gross income tax on the portion of the taxpayer's income considered unrelated to its not-for-profit purpose.

IC 6-2.1-2-2 imposes gross income tax on "... the entire taxable gross income of a taxpayer who is a resident or domiciliary of Indiana..." IC 6-3-2-1 imposes adjusted gross income tax on... the adjusted gross income of every resident person,..." IC 6-3-8-1 imposes the supplemental net income tax on corporations. The taxpayer, as an Indiana corporation, is subject to these taxes unless a specific exemption is provided elsewhere in the law. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Further, it is established law that all tax exemptions must be strictly construed against taxpayers. Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994).

IC 6-2.1-3-20(a) and IC 6-3-2-2.8 provide exemptions from the gross income tax and adjusted gross income tax for the income of a qualified not-for profit corporation derived from the corporation's activities promoting the corporation's charitable purpose. Pursuant to IC 6-3-8-5, the supplemental net income tax has the same exemptions as the adjusted gross income tax. The Indiana Tax Court dealt with these exemptions in the case Raintree Friends Housing v. Indiana Department of Revenue, 667 N.E.2d 810 (Ind. Tax 1996). In this case, the Court found that a housing corporation that provided retirement housing qualified for the charitable purposes exemptions from the gross income tax, adjusted gross income tax, and supplemental net income tax. Since the tax statute does not define the term "charitable," the Court looked to the definition found in Black's Law Dictionary 213 (5th ed. 1979) as follows:

> Charity is broadly defined as:
>
> A gift for, or institution engaged in, public benevolent purposes. [It is a}n attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

The taxpayer does provide the benevolent service of educating people about a turn of the century Indiana farming village. Individuals learning about the history of Indiana benefits all of society. Further, the taxpayer does not gain personally from the provision of these educational services. The taxpayer's activities meet the definition of charitable as did the retirement center in the Raintree Case. Therefore, the taxpayer's income derived from activities directly involved in providing this beneficial and educational service qualify for the charitable purpose exemption.

Not-for-profit status as a charitable corporation, however, does not automatically qualify a corporation for the charitable purpose exemption on all income. The exemptions are limited by IC 6-2.1-3-23 and IC 6-3-2-3.1 respectively that impose gross and adjusted gross income tax on a charitable not-for-profit's unrelated business income as defined in Section 513 of the Internal Revenue Code. The department's assessment of gross and adjusted gross income tax was guided by the provisions of 26 IRC Sec. 513 as follows:

> ... The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

The department agreed with the taxpayer that the village income from general admission charges, blacksmithing, and special events is directly related to and furthers the historical and educational purpose of the taxpayer. The horse feed vending machine also furthers the taxpayer's charitable purpose in that the feeding of horses is an activity routinely engaged in during the turn of the century and it is beneficial and educational for visitors to engage in that historical experience. However, the department considered several of the activities and sources of income as unrelated to the primary charitable, educational purpose of the taxpayer and assessed gross income tax, adjusted gross income tax and supplemental net income tax on the proceeds from these activities. The taxed sources of revenue include income from refreshment stands, product sales in the general store, hotel revenues, product sales outside the general store but within the village and the penny machine. These activities are not substantially related to the taxpayer's educational purpose. Therefore, this income does not qualify for exemption.

FINDING

The taxpayer's protest to the tax assessed on the income from the horse feed machine is sustained. The remainder of the taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

The taxpayer also protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Negligence is defined at 45 IAC 15-11-2(b) as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2 (c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed... " The taxpayer presented substantial evidence showing that it met this burden. The negligence penalty does not apply in this situation.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20020460.LOF

LETTER OF FINDINGS NUMBER: 02-0460
SALES/USE TAX
For Year 1998

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales & Use Tax – Manufacturing Equipment

Authority: IC 6-2.5-5-3(b); General Motors Corp. v. Indiana Department of Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991).

Taxpayer claims that cranes purchased for the erection of houses are manufacturing equipment that are eligible for exemption from imposition of sales and use tax.

II. Tax Administration – Credit for Prior Tax Paid

Taxpayer requests credit for a Michigan sale for which Indiana use tax has already been paid.

STATEMENT OF FACTS

Taxpayer is engaged in the manufacture and the construction of prefabricated houses. It builds houses it has manufactured along with houses that have been manufactured by other house manufacturers. It constructs panelized walls, cornices, soffets, and trusses for the roof and rafters. It sells doors and windows for which it collects sales taxes, as it does when it works for other house builders.

In 1998, taxpayer purchased two trucks on which cranes were mounted. The cranes are used to hoist the trusses, cornices, soffets, and wall panels so that they can be assembled on the building site in the construction of a house.

DISCUSSION

I. Sales & Use Tax – Manufacturing Equipment

Taxpayer believes that, because the cranes are used in the production of homes, the purchase of the cranes was exempt from the imposition of sales and use tax under IC 6-2.5-5-3(b), which reads:

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or finishing of other tangible personal property.

Because the cranes are not utilized in the manufacturing of the components of the houses, but are used in the construction of the houses themselves, the issue then becomes whether or not a house is tangible personal property. Clearly it is not.

Houses are real property. Because taxpayer builds buildings situated on land located in Indiana, it uses its cranes to makes improvements to realty. Therefore, taxpayer is not eligible for the manufacturing exemption to the sales and use tax imposed on the purchase of the cranes.

Taxpayer argues that its situation is governed by the case of General Motors Corp. v. Indiana Department of Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991). In General Motors, the taxpayer was successful in claiming the exemption for packing material that was used to ship automobile parts from its manufacturing facility to its assembly plant, where the finished product (an automobile) was assembled. The taxpayer asserts that it is engaged in an integrated production process that ends when a finished marketable product is produced. By undertaking the manufacture of the components of the house that are incorporated into the finished product, an argument could be made that the entire process, including the operation of the cranes to put the components into place, is an integrated production process within the mandate of General Motors.

Taxpayer in General Motors was involved in the manufacture of automobiles, which are tangible personal property. Once again, because taxpayer is making improvements to realty that fall outside of the scope of the manufacturing exemption of IC 6-2.5-5-3(b), taxpayer is not entitled to relief.

FINDINGS

The taxpayer is respectfully denied.

II. Tax Administration – Credit for Prior Tax Paid

Taxpayer claims that its only notice of this credit was in a report from the auditor. Taxpayer has submitted corroborating documentation to the Department. However, the auditor's list of adjustments shows that credit for the sale to Michigan has already been given.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20020498.LOF

LETTER OF FINDINGS NUMBER: 02-0498
ADJUSTED GROSS INCOME TAX
FOR THE YEARS 1998, 1999, 2000

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax-Throwback sales

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1(b); 45 IAC 1-1-119; 45 IAC 3.1-1-53; 45 IAC 3.1-1-64; Public Law 86-272 (15 USCS § 381); Wisconsin Department of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214; 112 S. Ct. 2447; 120 L.Ed.2d 174 (1992)

Taxpayer protests the Department's assessment of additional gross income tax on sales the audit determined should be thrown back to Indiana.

II. Tax Administration-Reliance and retroactivity

Authority: 45 IAC 15-3-2; Tax Policy Directive #9

Taxpayer protests the Department's assessment of additional adjusted gross income tax on sales the audit determined should be thrown back to Indiana. A prior Letter of Findings for this taxpayer had determined sufficient nexus existed to prevent throwback sales.

III. Adjusted Gross Income Tax-Numerator of property factor

Authority: 45 IAC 3.1-1-44.

Taxpayer protests the change to the denominator of the property factor without a concomitant change in the numerator, alleging that such failure to change the numerator distorts taxpayer's tax liability.

STATEMENT OF FACTS

The taxpayer distributes electronic equipment throughout the United States, Canada, and Latin America. In addition to distribution activities, taxpayer is also responsible for marketing and servicing its products in North and South America. The taxpayer has three divisions: Branded products, original equipment manufacturer products (OEM), and customer service and support. The branded products division offers products such as printers, scanners, and personal computers. The OEM division supplies a wide range of OEM products throughout North, Central, and South America. The products marketed by OEM include integrated chips, floppy disks, memory cards, and power supplies. The customer service and support division provides support for customers both before and after the sale. Customer support handles customer relation issues, warranty administration, and technical assistance.

The taxpayer agrees that the Department's adjustment of adjusted gross income tax for state income taxes, property taxes, and charitable contributions was correct. The taxpayer also agrees to the property factor adjustment for rent expenses and inventory. The only issue still in protest is whether or not the adjustment for throwback sales was proper. Taxpayer was sustained in a previous Letter of Findings on the same issue.

Additional facts will be provided below as necessary.

I. Adjusted Gross Income Tax-Throwback sales

DISCUSSION

Under IC § 6-8.1-5-1(b), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

IC § 6-3-1-3.5, subsection (b), defines "adjusted gross income" for corporations as "the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code)" with four adjustments not at issue here. IC § 6-3-2-1 establishes the rate of the tax imposed on adjusted gross income; IC § 6-3-2-2 defines "adjusted gross income derived from sources in Indiana." Subsection (n) states that a "taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

With respect to Indiana's adjusted gross income tax statute, 45 IAC 3.1-1-53 provides in pertinent part:

When Sales of Tangible Personal Property Are in This State. Gross receipts from the sales of tangible personal property (except sales to the United States Government—See Regulation 6-3-2-2(e)(050) *[45 IAC 3.1-1-54]* are in this state: (a) if the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point or other conditions of sales; or

(b) if the property is shipped from an office, store, factory, or other place of storage in this state, and the taxpayer is not taxable in the state of the purchaser.

Subsection (5) provides in pertinent part:

If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Such sale is termed a "Throwback" sale.

45 IAC 3.1-1-64 defines "taxable in another state" as "when such state has jurisdiction to subject it to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and laws of the United States. **Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A. § 381-385.**" **(Emphasis added).**

Public Law 86-272 provides in pertinent part:

No State... shall have power to imposes, for any taxable year..., a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1)

15 USCS § 381(a).

The United States Supreme Court, in Wisconsin Department of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214, 112 S.Ct. 2447, 120 L.Ed.2d 174 (1992), construed the above statutory language to hold that a business's in-state activities could subject it to that state's taxing jurisdiction if those activities involved more than the "mere solicitation of orders" and more than de minimis contact in connection with the solicitation of orders. The Court set forth a method of analysis by which to determine whether or not a business's in-state activities cause it to lose the tax immunity 15 USCS § 381 confers: "Section 381 was designed to increase... the connection that a company could have with a State before subjecting itself to tax. Accordingly, whether in-state activity other than 'solicitation of orders' is sufficiently de minimis to avoid loss of the tax immunity conferred by § 381 depends upon whether that activity establishes a nontrivial additional connection with the taxing State." Unless activities are "ancillary to" ordering product or de minimis, then a business can be taxed in another jurisdiction without that jurisdiction violating § 381.

The previous LOF issued to the taxpayer stated that it was not required to "throwback" sales to the numerator of the sales factor in its consolidated return because the taxpayer had nexus in the states where the sales were made. The previous LOF did not specifically address the significance of the fact that the sales at issue were made by a member of the affiliated group that did not have nexus in the states at issue, but another member of the affiliated group, the parent company, did have nexus in those states. Electing to file a consolidated return does not change the rules for attributing sales to the numerator of the sales factor. Since the attribution of such sales is done prior to the aggregation of those sales into the consolidated factor, only those tax attributes of the member are relevant.

The audit report assumes that the previous LOF was based on a unitary analysis relating to a combined return. Whether this is true or not, it is incorrect and irrelevant. The taxpayer has not petitioned to file a combined return and the Department is not attempting to require such a return. Therefore, concepts and analysis in making such a determination in the context of a combined filing are inapplicable. The previous LOF was incorrect and the taxpayer is required to throwback those sales made by members of the affiliated group into states in which the member did not have nexus, even though another member of the group did have nexus in that state.

FINDING

The taxpayer's protest concerning the issue of throwback sales is denied.

II. Adjusted Gross Income Tax-Reliance, and retroactivity

DISCUSSION

Taxpayer's protest is based on the extent to which taxpayer may rely on a Departmental Ruling issued as to its particular set of facts and circumstances, and the extent to which the Department may retroactively change the application of a prior Ruling involving the same taxpayer, facts, and issues. The auditor stated in the Audit Summary for tax years 1998, 1999 and 2000 that there have been no changes in the facts since the issuance of the prior Letter of Findings. That Letter of Findings did not, as the auditor alleged, rely on case law that has since been discredited. There is no mention of cases explicating unitary filings, i.e., Finnegan. The prior Letter relied on statutes, regulations, and a United States Supreme Court case, Wisconsin Department of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214; 112 S. Ct. 2447; 120 L.Ed.2d 174 (1992); this case is still good law. The prior Letter did not rely on a unitary analysis. Taxpayer has always filed consolidated tax returns. The statutes and regulations have not changed. Therefore, the analysis in the prior Letter of Findings is still an applicable final ruling by the Department.

The Department's statutes, regulations, and policy directives set forth strict limits on the Department's ability to retroactively change the application of a prior ruling involving the same taxpayer, the same set of facts and issues. The standards are set forth generally at 45 IAC 15-3-2. 45 IAC 15-3-2(d)(3) specifically sets forth the extent to which a taxpayer may rely on a prior ruling:

> (3) In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it. Since the department publicizes summaries of rulings which it makes, other taxpayers with substantially identical factual situations may rely on the publicized rulings for informational purposes in preparing returns and making tax decisions. Generally, department publications may be relied on by any taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes. Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

Pursuant to the two most important statements above, i.e., "only the taxpayer to whom the ruling was issued is entitled to rely on it," and "[l]etters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested," taxpayer was entitled to rely on the previous Letter of Findings in continuing to file consolidated returns that did not throw back sales to Indiana.

Tax policy directive #9, effective since December 1995, sets forth the time limits on reliance: "a departmental ruling will automatically become null and void and no longer of any effect for tax years beginning after December 31 of the sixth (6^{th}) year after the year in which the ruling is issued." In conjunction with 45 IAC 15-3-2(c) and (d)(2), Tax Policy Directive # 9 states in relevant part:

> A ruling may become null and void prior to the end of the six (6) year period given above under the appropriate circumstances. For instance, a change in the Department's position, a change in the tax laws, or a change due to a final court decision may cause a revocation of a ruling. The revocation of the ruling will be effective on the following dates:
>
> (1) The date of the notice sent by the Department to the taxpayer to whom the ruling was issued that the Department's position has changed.
>
> (2) The effective date of a change in the statutory law or a change in the rules interpreting the statutory law.
>
> (3) The beginning date of the open tax year to which a final court decision applies.

Revocations can be applied retroactively "under the appropriate circumstances." Such revocations are made on a case-by-case-basis "taking into account all relevant facts and circumstances." The following circumstances are not all-inclusive: misstatement or omission of material facts by a taxpayer or his representative in the original request for a ruling; the facts, as developed after the ruling, turn out to be materially different from the facts on which the department based its original ruling; taxpayer's lack of good faith; incorrect interpretation of the law. Under the foregoing circumstances, a ruling "would be revoked retroactively and treated as if it had never been issued."

45 IAC 15-3-2(c) and (d)(2) provide in relevant part:

> (c) As a general rule, the modification of a rule will not be applied retroactively. If a rule is later found to be inconsistent with changes in the law by statute or by decisions of a court of precedence, the rule will not protect a taxpayer in the same or subsequent years once the rule has been determined to be inconsistent with the law.
>
> (d) (2) As a general rule, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling.

The regulation then goes on to repeat what can be found in Tax policy directive #9. Both the taxpayer in the present taxpayer protest and the auditor in the current audit state with authority that none of the factors set forth for retroactive application appear in the current protest.

It is the Department's considered decision that taxpayer was entitled to rely on the prior Letter of Findings for the entire six (6) years provided for by Regulation and Tax Policy Directive #9, until the publication of this Letter of Findings which finds that the Taxpayer has incorrectly interpreted the law for reasons set forth in Issue I.

FINDING

Taxpayer's protest concerning the assessment of additional adjusted gross income tax under Indiana's throw back rule is sustained because taxpayer was entitled to rely on a prior Letter of Findings which addressed the same set of facts and issues in a previous audit.

III. Adjusted Gross Income Tax-Numerator of the property factor

DISCUSSION

Taxpayer protests an alleged lack of consistency in the application of the adjustment for inventory obsolescence, and requests that the numerator of the Indiana property factor be adjusted on a proportionate basis to the adjustment relating to obsolete inventory made to the denominator of the property factor. The auditor relied on 45 IAC 3.1-1-44 to make an adjustment to the denominator,

and stated that during the audit, taxpayer did not provide documents showing that taxpayer's calculations for its Indiana inventory included obsolescence. The auditor relied on the valuation method taxpayer used for Federal income tax purposes as the proper valuation to be used in the property factor.

45 IAC 3.1-1-44 provides that " [i]nventory is included in the property factor in accordance with the valuation method used by the taxpayer for Federal income tax purposes." Although taxpayer did not provide documentation to support its position during the audit, the suggestions made in taxpayer's protest letter and at the hearing indicate that the property factor should be re-examined:

> For the tax period in question (taxpayer) utilized the cost basis for purposes of determining the value of inventory used to calculate its Indiana property factor. During the audit, the auditor adjusted the denominator of (taxpayer's) property factor to reflect inventory obsolescence utilized to calculate inventory values for purposes of the Federal 1120 Schedule L Balance Sheet (see Audit Report, page 14). (Taxpayer agrees with the auditor's adjustment to the denominator of the property factor to reflect the their federal inventory valuation in accordance with 45 IAC 3.1-1-44. The inventory obsolescence adjustment relates directly to inventory maintained in (taxpayer's) Indiana warehouse. In doing so, the auditor adjusted the denominator of (taxpayer's) property factor to appropriately consider inventory obsolescence so as to tie the denominator of the property factor to the total inventory value reflected on the Federal 1120 Schedule L Balance Sheet. However, the auditor did not adjust the numerator of the property factor to reflect obsolescence related to inventory located in Indiana. This would result in an apportionment percentage of more than 100% as it relates to inventory for the company if all states' factors were totaled.

Subsequent to the hearing, taxpayer provided a type of balance sheet analysis of the property factor issue that supports another look at the original analysis.

FINDING

Taxpayer's protest is sustained subject to review by Audit.

DEPARTMENT OF STATE REVENUE

02-20030017.LOF

LETTER OF FINDINGS NUMBER: 03-0017
INCOME TAX
For Year 1998

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Agency exemption

Authority: Lindemann v. Wood, No. 49T10-0204-TA-39, 2002 Ind. Tax LEXIS 81 (Ind. Tax Ct. 2002); 45 IAC 15-3-2(d)(3).

Taxpayer, as manager of a hotel chain, protests the imposition of gross income tax on transfers of money between the hotels' owners and taxpayer's employees who work in the hotels, claiming an agency exemption exists.

STATEMENT OF FACTS

Taxpayer is a corporation that, at the request of various hotel owners (hereinafter "owners"), manages all of the operations of the hotel for the account of the owner, including the hiring and management of the hotel's employees (hereinafter "employees"), on behalf of the owners. At various times throughout the audit period, taxpayer disbursed funds to the employees from accounts that the owners had with taxpayer. These disbursements covered the payroll expenses associated with the employees who work for the hotel. These employees work for taxpayer; taxpayer is their technical employer. Income tax was imposed on the receipt of funds by taxpayer from the owners when those funds were later disbursed to compensate taxpayer's employees as payroll expenses.

The owners furnish and own all of the tools, materials, and equipment the employees used in performing their jobs. The owners also incur the cost of training the employees. Taxpayer disburses salaries and benefits to the employees and remits payroll taxes to federal and state governments using the owners' funds.

All funds that are derived from the operation of the hotel are deposited in accounts under the owners' names, and all disbursements, including payroll, are made from these funds. These accounts are in the name of the owners and are subject to claims against them by owners' creditors. If revenues are insufficient to pay for the hotel's expenses, including payroll, the owners provide additional working capital to sustain hotel operations.

Journal entries record payroll disbursements sufficient to offset dollar-for-dollar the payroll disbursements shown on taxpayer's books, and taxpayer notes on its books that it is passing along directly to the employees the amounts advanced to taxpayer by the owners to cover payroll expenses. All federal and state employment credits flow back to the owners.

DISCUSSION

I. Gross Income Tax—Agency exemption

Taxpayer relies on two legal theories in its assertion that the funds were transferred to taxpayer's employees by taxpayer as an agent for the hotels' owners, and therefore not subject to income tax. The first is that the facts at hand fall squarely within the ambit of an unpublished Tax Court case. The second is that the facts at hand fall squarely within the ambit of a previously written Supplemental Letter of Findings by the Department. Both cases found in favor of taxpayer's position.

First, as is the case with all unreported Tax Court decisions, the decision in the case referenced by taxpayer has no weight as binding precedent. According to Rule 17 of the Indiana Tax Court:

> All judgments shall be incorporated in written memorandum decisions by the court. Unless specifically designated "For Publication," such written memorandum decisions shall not be published and shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case. Judgment shall be subject to review as prescribed by relevant Indiana rules and statutes.

The Tax Court has declared as much in Lindemann v. Wood, No. 49T10-0204-TA-39, 2002 Ind. Tax LEXIS 81 (Ind. Tax Ct. 2002). Because the case is an unpublished case, the Department declines taxpayer's request to apply its analysis to the case at hand.

Second, the Department also declines taxpayer's invitation to apply directly the reasoning in its former Supplemental Letter of Findings 95-0265 IT. As is the case with all tax protests, no two protests are created equal. Letters of Findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested. 45 IAC 15-3-2(d)(3). Therefore, Letters of Findings are unique to each individual taxpayer and are of no precedential value to any other taxpayer's protest.

However, taxpayer's argument may clearly be determined through its submissions to the Department and through the language of the legal determinations upon which taxpayer wishes the Department to base its determination.

Taxpayer believes it acted as an agent when it transferred funds from the owners to taxpayer's employees as salaries. As one of the aspects of showing that the agency relationship exists, taxpayer must show that it does not receive any beneficial interest in the funds as they are transferred through taxpayer from the owners to the employees. Taxpayer insists, and has shown, that the funds that flow through match dollar for dollar the payroll expenses that the employees accrue. And while this is some indicia that taxpayer receives no benefit from paying the owners' expenses from the owners own accounts, to say that taxpayer has no beneficial interest in the funds would dramatically undermine the importance of the employer/employee relationship between taxpayer and the hotels' employees.

Taxpayer freely admits that the employees are its own, although it contends that without the owners, taxpayer would have no need for the employees. Taxpayer also admits that it has the power to hire and fire these employees at will, although taxpayer suggests that it does so only with the owners' best interests in mind. And while taxpayer has shown some evidence that the employees understand that they are working for the benefit of the owners, it cannot be disregarded the extent to which employees' efforts benefit taxpayer.

Part of taxpayer's submissions to the Department includes a management agreement between one of the owners and taxpayer. This agreement details the arrangement between owners and taxpayer and outlines the method of reimbursement of taxpayer by owners. This "management fee" structure clearly demonstrates how taxpayer takes a beneficial interest in both the performance of its employees and their compensation.

The "management fee" structure is made up of two parts: The Base Management Fee and the Incentive Management Fee. The Base Management Fee represents a percentage of the gross revenues, which flow from the hotels to their respective owners. These gross revenues are generated through a variety of manners, including (but not limited to) the renting of rooms, offices, and meeting space. For these revenues to be generated, customers must be willing to pay for them. Therefore, customer satisfaction plays a large role in the generation of gross revenues. If hotels' employees do not perform their jobs satisfactorily, customers will not do business with the hotels, and gross revenues will not be generated for the owners. Subsequently, taxpayer's Base Management Fee will suffer. Because taxpayer has a financial interest in the revenues it generates through its employees, and because taxpayer has the power to terminate any employee not performing his job to taxpayer's satisfaction, taxpayer has a beneficial interest in the conduct of its employees.

The Incentive Management Fee takes it one step further. Here, taxpayer receives a percentage of Available Cash Flow, at an amount not to exceed the Operating Profit for the fiscal year. Available Cash Flow, therefore, to some degree, is a function of Operating Profit. Operating Profit is defined as gross revenues minus certain enumerated deductions. Among these deductions are "[t]he cost of sales including salaries, wages, employee benefits, …" Here it is clearly demonstrated how employee wages affect taxpayer's compensation, because as taxpayer has a direct power over the number of employees and their salaries, it can manipulate its own Incentive Management Fee by increasing Operating Profit. This demonstrates how taxpayer receives a beneficial interest in its employees, regardless of who their technical employer is.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030032.LOF

LETTER OF FINDINGS NUMBER: 03-0032
INCOME TAX
For Years 1994, 1995, and 1996

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Agency exemption

Authority: Lindemann v. Wood, No. 49T10-0204-TA-39, 2002 Ind. Tax LEXIS 81 (Ind. Tax Ct. 2002); 45 IAC 15-3-2(d)(3).

Taxpayer, as manager of a hotel chain, protests the imposition of gross income tax on transfers of money between the hotels' owners and taxpayer's employees who work in the hotels, claiming an agency exemption exists.

II. Gross Income Tax—Intercompany Royalties

Authority: IC 6-2.1-4-6

Taxpayer claims that the auditor has erroneously imposed gross income tax at the high rate on royalties paid within the company. As such, taxpayer believes these royalties should not subject taxpayer to gross income tax.

STATEMENT OF FACTS

Taxpayer is a corporation that, at the request of various hotel owners (hereinafter "owners"), manages all of the operations of the hotel for the account of the owner, including the hiring and management of the hotel's employees (hereinafter "employees"), on behalf of the owners. At various times throughout the audit period, taxpayer disbursed funds to the employees from accounts that the owners had with taxpayer. These disbursements covered the payroll expenses associated with the employees who work for the hotel. These employees work for taxpayer; taxpayer is their technical employer. Income tax was imposed on the receipt of funds by taxpayer from the owners when those funds were later disbursed to compensate taxpayer's employees as payroll expenses.

The owners furnish and own all of the tools, materials, and equipment the employees used in performing their jobs. The owners also incur the cost of training the employees. Taxpayer disburses salaries and benefits to the employees and remits payroll taxes to federal and state governments using the owners' funds.

All funds that are derived from the operation of the hotel are deposited in accounts under the owners' names, and all disbursements, including payroll, are made from these funds. These accounts are in the name of the owners and are subject to claims against them by owners' creditors. If revenues are insufficient to pay for the hotel's expenses, including payroll, the owners provide additional working capital to sustain hotel operations.

Journal entries record payroll disbursements sufficient to offset dollar-for-dollar the payroll disbursements shown on taxpayer's books, and taxpayer notes on its books that it is passing along directly to the employees the amounts advanced to taxpayer by the owners to cover payroll expenses. All federal and state employment credits flow back to the owners.

DISCUSSION

I. Gross Income Tax—Agency exemption

Taxpayer relies on two legal theories in its assertion that the funds were transferred to taxpayer's employees by taxpayer as an agent for the hotels' owners, and therefore not subject to income tax. The first is that the facts at hand fall squarely within the ambit of an unreported Tax Court opinion. The second is that the facts at hand fall squarely within the ambit of a previously written Supplemental Letter of Findings by the Department. Both cases found in favor of taxpayer's position.

First, as is the case with all unreported Tax Court decisions, the decision referenced by taxpayer has no weight as binding precedent. According to Rule 17 of the Indiana Tax Court:

> All judgments shall be incorporated in written memorandum decisions by the court. Unless specifically designated "For Publication," such written memorandum decisions shall not be published and shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case. Judgment shall be subject to review as prescribed by relevant Indiana rules and statutes.

The Tax Court has declared as much in Lindemann v. Wood, No. 49T10-0204-TA-39, 2002 Ind. Tax LEXIS 81 (Ind. Tax Ct. 2002). Because the case cited is an unpublished case, the Department declined taxpayer's request to apply its analysis to the case at hand.

Second, the Department also declines taxpayer's invitation to apply directly the reasoning in its former Supplemental Letter of Findings. As is the case with all tax protests, no two protests are created equal. Letters of Findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested. 45 IAC 15-3-2(d)(3). Therefore, Letters of Findings are unique to each individual taxpayer and are of no precedential value to any other taxpayer's protest.

However, taxpayer's argument may clearly be determined through its submissions to the Department and through the language of the legal determinations upon which taxpayer wishes the Department to base its determination.

Taxpayer believes it acted as an agent when it transferred funds from the owners to taxpayer's employees as salaries. As one of the aspects of showing that the agency relationship exists, taxpayer must show that it does not receive any beneficial interest in the funds as they are transferred through taxpayer from the owners to the employees. Taxpayer insists, and has shown, that the funds that flow through match dollar for dollar the payroll expenses that the employees accrue. And while this is some indicia that taxpayer receives no benefit from paying the owners' expenses from the owners own accounts, to say that taxpayer has no beneficial interest in the funds would dramatically undermine the importance of the employer/employee relationship between taxpayer and the hotels' employees.

Taxpayer freely admits that the employees are its own, although it contends that without the owners, taxpayer would have no need for the employees. Taxpayer also admits that it has the power to hire and fire these employees at will, although taxpayer suggests that it does so only with the owners' best interests in mind. And while taxpayer has shown some evidence that the employees understand that they are working for the benefit of the owners, it cannot be disregarded the extent to which employees' efforts benefit taxpayer.

Part of taxpayer's submissions to the Department includes a management agreement between one of the owners and taxpayer. This agreement details the arrangement between owners and taxpayer and outlines the method of reimbursement of taxpayer by owners. This "management fee" structure clearly demonstrates how taxpayer takes a beneficial interest in both the performance of its employees and their compensation.

The "management fee" structure is made up of two parts: The Base Management Fee and the Incentive Management Fee. The Base Management Fee represents a percentage of the gross revenues, which flow from the hotels to their respective owners. These gross revenues are generated through a variety of manners, including (but not limited to) the renting of rooms, offices, and meeting space. For these revenues to be generated, customers must be willing to pay for them. Therefore, customer satisfaction plays a large role in the generation of gross revenues. If hotels' employees do not perform their jobs satisfactorily, customers will not do business with the hotels, and gross revenues will not be generated for the owners. Subsequently, taxpayer's Base Management Fee will suffer. Because taxpayer has a financial interest in the revenues it generates through its employees, and because taxpayer has the power to terminate any employee not performing his job to taxpayer's satisfaction, taxpayer has a beneficial interest in the conduct of its employees.

The Incentive Management Fee takes it one step further. Here, taxpayer receives a percentage of Available Cash Flow, at an amount not to exceed the Operating Profit for the fiscal year. Available Cash Flow, therefore, to some degree, is a function of Operating Profit. Operating Profit is defined as gross revenues minus certain enumerated deductions. Among these deductions are "[t]he cost of sales including salaries, wages, employee benefits, …" Here it is clearly demonstrated how employee wages affect taxpayer's compensation, because as taxpayer has a direct power over the number of employees and their salaries, it can manipulate its own Incentive Management Fee by increasing Operating Profit. This clearly demonstrates how taxpayer receives a beneficial interest in its employees, regardless of who their technical employer is.

FINDINGS

The taxpayer is respectfully denied.

II. Gross Income Tax—Intercompany Royalties

Taxpayer, under IC 6-2.1-4-6, as both the payer and the payee of the Intercompany royalties, was qualified and did file a consolidated Indiana gross income tax return for 1996. Therefore, these royalties are not to be included in taxpayer's gross income.

FINDINGS

The taxpayer is sustained, subject to verification by the audit department.

DEPARTMENT OF STATE REVENUE

04-20030075.LOF

LETTER OF FINDINGS NUMBER: 03-0075
SALES TAX
For Years 1999, 2000, and 2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax—Application to tangible personal property purchased in Indiana for use outside the state

Authority: IC 6-2.5-5-15

Taxpayer protests the imposition of sales tax on truck campers purchased in Indiana and subsequently used outside the state because the Indiana Code makes exempt purchases where certain items are to be transferred and used out of state.

II. Sales Tax—Ability to impose sales tax on items where other states have imposed their own gross retail taxes

Authority: IC 6-2.5-2-1(b)

Taxpayer protests the imposition of sales tax on truck campers purchased in Indiana and subsequently used outside the state because the other states have imposed their own gross retail tax upon taxpayer's customers

III. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer sells new and used campers, travel trailers, fifth wheels, and truck campers. Taxpayer also sells parts and services all makes and models. The transactions at issue here all involve out-of-state customers who signed a form (ST-137) attesting to the fact that the customers were taking their purchase (truck campers, in this case) out of state. Taxpayer has been assessed sales tax on these sales, and in some instances the customers have also been assessed use tax by their home state.

DISCUSSION

I. Sales Tax—Application to tangible personal property purchased in Indiana for use outside the state

Taxpayer is in the business of selling new and used campers, travel trailers, and fifth wheels. As part of its business, taxpayer also sells a line of truck campers. These campers differ from normal trailers in that they don't attach to the end and aren't towed by the truck. Instead, these campers are placed onto the bed of a truck. Despite this very relevant difference, the truck campers are quite similar to ordinary trailer campers on the inside.

When taxpayer sells ordinary campers and trailers to its out-of-state customers, the customers are then able to claim an exemption from Indiana sales tax through IC 6-2.5-5-15. To take advantage of this statutory exemption, taxpayer has its customers fill out a form ST-137. This form may be used for such items as aircraft, manufactured homes, motor vehicles, trailers, and watercraft. The form, which implements IC 6-2.5-5-15, is intended to be used only on those particular items which are to be registered and/or titled outside the state of Indiana.

IC 6-2.5-5-15 reads:

Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:

(1) Upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;

(2) The motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and

(3) The motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

Truck campers are in a class of their own, being neither trailers nor free-moving campers. They are attached to trucks that are typically independently registered or titled, but are themselves very infrequently registered or titled. Because taxpayer has offered no proof that these particular truck campers were in fact titled or registered out of state, and because they do not fall into any of the classes of vehicles described in form ST-137 or identified in IC 6-2.5-5-15, these forms should not have been used by taxpayer because they offer no exemption for the sale of truck campers, regardless of the state of residence of the customer.

FINDINGS

The taxpayer is respectfully denied.

II. Sales Tax—Ability to impose sales tax on items where other states have imposed their own gross retail taxes

DISCUSSION

Because taxpayer has been incorrectly filing ST-137 forms with Indiana, Indiana has been in contact with those states in which taxpayer's customers have been taking their purchases. Subsequently, because the form signals those other states that no retail tax has been paid on the purchase, and because taxpayer's customer claims that he will be using the property in that state, those states have been assessing taxpayer's customers with their own version of a use tax, should one exist in that state. Taxpayer believes that, should it be found liable for sales tax to Indiana, that unfair double taxation results on each individual transaction where two states impose their own tax. And while taxpayer's contention has some merit, it is the assessment of the use tax by the customer's home state and not the imposition of sales tax by Indiana that results in the double taxation.

According to IC 6-2.5-2-1(b), the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. IC 6-2.5-2-1(b). Therefore, even though taxpayer collected no sales tax from its customer, taxpayer remains liable for the tax because it was to act as the state's agent and collect the tax. The fact that taxpayer incorrectly thought itself exempt is irrelevant.

Because taxpayer should have collected sales tax from its customers, taxpayer's course of action to get that money back is against its customers, not against the state of Indiana. Consequently, if this results in taxpayer's customers being unfairly double

taxed, then taxpayer's customers have a cause of action for a refund from their home state, not Indiana.

FINDINGS

The taxpayer is respectfully denied.

DISCUSSION

III. Tax Administration- Ten Percent (10%) Negligence Penalty

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer has demonstrated its efforts to comply in good faith with the tax laws of Indiana. These factors show that taxpayer was not negligent in its duty to collect and remit sales tax.

FINDINGS

The taxpayer is sustained.

DEPARTMENT OF STATE REVENUE

0220030430P.LOF

LETTER OF FINDINGS NUMBER: 03-0430P
Corporate Income Tax
For the Year 2001-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Penalty

Authority: IC 6-2.1-5-1.1, IC 6-8.1-10-2.1.

The taxpayer protests the imposition of penalty on the tax liability for 2002.

II. Tax Administration- Interest

Authority: IC 6-8.1-10-1 (a) (e).

The taxpayer protests the imposition of interest.

STATEMENT OF FACTS

The taxpayer is an out-of-state corporation that performs janitorial services and sells products in Indiana. After an audit, the Indiana Department of Revenue, hereinafter the "department," assessed gross income tax against the taxpayer. The taxpayer protested the penalty and interest. No penalty was imposed on the adjustment resulting from the audit of the tax year ending December 31, 2001. A penalty was imposed for the failure to file the return and pay the tax by the due date for the tax year ending December 31, 2002. Although the taxpayer was given adequate time, the taxpayer never requested a hearing on the imposition of the penalty and interest. Therefore, this Letter of Findings is based upon the documentation in the file.

I. Tax Administration- Penalty

DISCUSSION

IC 6-2.1-5-1.1 requires taxpayers to file gross income tax returns and pay at least twenty-five percent (25%) of the total estimated liability on a quarterly basis. IC 6-8.1-10-2.1 imposes a ten percent (10%) penalty on taxpayers who fail to file a return or fail to timely pay the total tax liability. The taxpayer failed to file the required quarterly gross income tax returns for the year 2002. The taxpayer also failed to timely pay the estimated gross income tax due for the year 2002. The department properly imposed the penalty on the taxpayer for the year 2002.

FINDING

The taxpayer's protest is denied.

II. Tax Administration- Interest

DISCUSSION

The taxpayer protests the imposition of interest pursuant to IC 6-8.1-10-1 (a) as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

The law goes on to state at IC 6-8.1-10-1 (e) that "... the department may not waive the interest imposed under this section." Clearly, the department does not have the authority to waive interest under any circumstance. Therefore, the interest cannot be waived in this taxpayer's cause.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20030438P.LOF

LETTER OF FINDINGS NUMBER: 03-0438P
Negligence Penalty
For Years 1998, 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b); 45 IAC 1.1-2-13; IRC 704; 45 IAC 1.1-2-4; 45 IAC 1.1-3-3; 45 IAC 3.1-1-153

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures glass containers for food and beverages. Taxpayer has 18 manufacturing plants throughout the country, including two in Indiana. Taxpayer is a 50% owner in a partnership that manufactures glass bottles. Taxpayer is also a 49% owner in a limited partnership that manufactures, reconditions, and repairs molds used to make the containers. Taxpayer has a unitary relationship with the partnerships and files a unitary return with the same.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

For all three years under audit, taxpayer did not report the partnership distributions for gross income tax. 45 IAC 1.1-2-13 imposes gross income tax on the portion of the partner's distributive share of partnership income under Section 704 of the Internal Revenue Code that was derived from sources in Indiana. Accordingly, taxpayer was assessed and paid gross income tax on these distributions.

For 1998, taxpayer failed to report receipts from management fees characterized as other income for gross income tax at the high rate. 45 IAC 1.1-2-4 imposes gross income tax at the high rate on services of any kind. The management fees were earned for accounting and managerial services performed at the headquarters in Indiana. Taxpayer was assessed and paid gross income tax on these fees.

For 1998, taxpayer did not report miscellaneous income characterized as other income for gross income tax at the high rate. 45 IAC 1.1-2-4 imposes gross income at the high rate on other income taxpayer fails to segregate on its records. Indiana miscellaneous income was unavailable, so it had to be determined with the best information available. Taxpayer was assessed and paid gross income tax on this income.

For 1998, 1999, and 2000, taxpayer did not report sales shipped from locations outside the state to customers in Indiana for gross income tax. 45 IAC 1.1-3-3 imposes gross income tax on sales shipped in interstate commerce if the sales are channeled through, associated with, or otherwise connected to a business situs in Indiana. Taxpayer agreed that the sales were channeled through the headquarters in Indiana. Taxpayer was assessed and paid gross income tax at the low rate for these sales.

For 1998, taxpayer reported the net income from the partnership distribution from the 50%-owned partnership as a net loss rather than a net gain. No source for this error was discovered. Taxpayer was assessed and paid adjusted gross income tax on this distribution.

For all three years under audit, taxpayer did not add back the gross income deducted on the federal return to federal taxable income to determine Indiana adjusted gross income. For all three years, taxpayer failed to add back gross income tax deducted on the federal return or the pro rata share of state income tax deducted on the partnership return of the 49%-owned partnership to determine the net income of the 49%-owned partnership that is included in the taxpayer's final federal taxable income. Taxpayer was assessed and paid adjusted gross income tax on these items.

For 1998, taxpayer did not add back the pro rata share of property tax deducted on the partnership return of the 49%-owned partnership. Taxpayer was assessed and paid adjusted gross income tax on this item.

45 IAC 3.1-1-153 requires the inclusion of the pro rata share of the partnerships' property, payroll, and sales in the calculation of the partner's apportionment percentage if taxpayer and the partnership have a unitary relationship under established standards, disregarding ownership requirements. The auditor found that taxpayer has the requisite control and flow of value with the partnerships to establish a unitary relationship which is evidenced by financial, managerial, and administrative functions provided by the taxpayer on behalf of the partnerships.

For 1998, taxpayer did not include the pro rata share of the 49%-owned partnership's property, payroll, and sales in its calculation of the Indiana apportionment percentage. Taxpayer agrees that there is a unitary relationship with the partnerships that requires inclusion of the partnership factors in the calculation of the Indiana apportionment percentage under 45 IAC 3.1-1-153. Taxpayer was assessed and paid adjusted gross income tax on these items.

Taxpayer's assertion is that, despite its numerous errors and oversights, it made a good faith effort to comply with the tax laws of Indiana. Taxpayer claims that it harbored no intent to defraud the State or deprive the State of tax revenues. However, as is stated in 45 IAC 15-11-2 (b), the standard is a negligence standard, not a standard of intentional misconduct. The regulation goes on to provide an example of negligence in "failure to reach and follow instructions provided by the department." In every case, taxpayer has shown it failed to comply with the written provisions of the Indiana Code and its corresponding regulations. Taxpayer has made no argument that the language in said provisions was ambiguous or misleading. In fact, in several instances taxpayer agreed with and admitted some of the auditor's more complex conclusions (e.g. the unitary nature of the business relationship).

Taxpayer has made no assertions that its actions were non-negligent, and in spite of that oversight, taxpayer has demonstrated its ignorance of the tax laws. Ignorance is not a defense to negligence.

FINDING

The taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420030441P.LOF

LETTER OF FINDINGS NUMBER: 03-0441P
Sales & Use Tax
For the month of September 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly sales tax return for the month of September 2003.

The taxpayer is a company with operations in Indiana and headquartered out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests waiver of penalty as the taxpayer has a history of timely payment and the taxpayer has been responsible in the handling of tax duties. Furthermore, the taxpayer asks the Department to consider the severity of the penalty relative to the offense. In this instance the taxpayer is being penalized a very substantial amount for being one day late and where no intentional delay occurred.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420030444P.LOF

LETTER OF FINDINGS NUMBER: 03-0444P
Sales & Use Tax
For the months January through May 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly sales tax returns for the months January thru May 2003.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be waived as the error was the result of an accounting change, and, the difficulty of learning a new computer system.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420030463P.LOF

LETTER OF FINDINGS NUMBER: 03-0463P
Sales and Use Tax
For the Years 2000-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer operates a restaurant. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer argued that the failure to pay the proper amount of use tax on certain capital equipment purchases was an error due to the taxpayer's implementation of a new general ledger system that interrupted some of the taxpayer's tax accrual procedures at the corporate office. The taxpayer's carelessness in the accrual of the proper amount of use tax is a breach of the taxpayer's duty that constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20020314.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 02-0314
Gross Retail & Use Tax
For the Years 1998, 1999, 2000

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ISSUES

I. Gross Retail & Use Tax-Purchases of oil for rental cars

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-5-8; 45 IAC 2.2-4-27(d)(4).

Taxpayer continues to protest the tax assessment on oil and oil filter purchases to maintain the operation of vehicles in its rental car business.

STATEMENT OF FACTS

Taxpayer operates short-term automobile rental locations in Indiana and several surrounding states. During the audit period, taxpayer had five Indiana locations. The audit raised a number of issues; the only one taxpayer protested concerns taxpayer's purchases of oil and oil filters used in the regular maintenance of the vehicle fleet. Taxpayer did not pay gross retail tax at the time of purchase. Taxpayer did not self-assess and remit use tax on these purchases. Therefore, the auditor made those adjustments to taxpayer's tax liability. Taxpayer's original protest was a purely legal argument based on differing interpretations of the applicable Indiana statutes and regulations. Taxpayer also protested the assessment of the 10% negligence penalty. Taxpayer's original protest was denied in part and granted in part. That part of the protest concerning the assessment of use tax on purchases of oil and oil filters where no gross retail tax was paid at the time of purchase was denied. That part of the protest concerning the penalty assessment was granted. Taxpayer timely requested a rehearing solely on the legal issue of interpreting the applicable Indiana statutes and regulations the Department relied upon to issue the original Letter of Findings. Taxpayer's request was granted based on its submission, in the request, of a complete analysis of the statutes and regulations at issue. That part of the original Letter of Findings pertaining to the penalty issue stands. Further facts will be added as required.

I. Gross Retail & Use Tax-Purchases of oil for rental cars

DISCUSSION

Taxpayer originally protested the assessment of use tax on its purchases of oil and oil filters. Taxpayer did not pay Indiana gross retail tax on the items of tangible personal property at the time of purchase. In its protest letter and written brief submitted as its hearing on the protest, taxpayer argued that oil changes were necessary for the proper maintenance of the cars that were rented out and were therefore not subject to tax. Taxpayer also argued that there was no basis in Indiana's statutes and regulations to tax oil and oil filters used in maintaining cars in businesses that rent out those cars to customers.

IC § 6-2.5-2-1 provides in relevant part:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2 and IC § 6-2.5-3-4 impose the use tax on items of tangible personal property if the gross retail tax was not paid at the time of purchase. Therefore, pursuant to IC § 6-2.5-3-6, taxpayer was liable for payment of use tax on the oil and oil filters purchased to change the oil on a regular basis for the proper maintenance of the vehicles in the rental fleet. These statutes and their governing regulations, at first blush, provided ample support for taxing these items of tangible personal property. There were no exemptions in the statutes or regulations that would relieve taxpayer of the duty either to pay the gross retail tax at the time of purchase, or to self-assess and remit the use tax.

Taxpayer argued that these items are necessary to maintain the proper operation of the rental vehicles; otherwise, they would be inoperable. Taxpayer also argued that inasmuch as IC § 6-2.5-5-8 did not require tax on the purchase of the cars for rental, the maintenance oil and filters should have been exempt as well. On the surface, taxpayer's argument was attractive; however, the department ruled that 45 IAC 2.2-4-27(d)(4) settled the issue:

Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

Therefore, the department reasoned, when taxpayer purchased oil and oil filters to change the oil in its vehicles, taxpayer consumed these supplies and either had to pay gross retail tax on them at the time of purchase or self-assess use tax and remit it to the Indiana Department of Revenue.

In its brief accompanying the request for rehearing, taxpayer presented arguments that touch upon the interpretation of 45 IAC 2.2-4-27(d)(4) as it relates to the rental car business. Specifically, taxpayer argued that oil and oil filters are not furnished "with" the vehicles taxpayer rents out. Instead, taxpayer argues, oil and oil filters should be considered component parts of the vehicles because when a customer rents a vehicle, that vehicle is a complete vehicle. That is, a rental vehicle consists of an engine, drive train, brake system, and cooling system and all these systems' component parts. Taxpayer drew an analogy between oil and oil filters as essential to engine performance as Freon to air conditioning, transmission fluid and filters to transmissions, etc. Under this interpretation, oil and oil filters are part of the property rented to customers; they are not supplies, fuels, or consumables furnished "with" the property.

Taxpayer also argues on rehearing that oil and oil filters are not "consumed" within the meaning of 45 IAC 2.2-4-27(d)(4). Rather, they are replaced because they become filled with particulate matter, not dissipated or consumed, subject to periodic replacement, such as fuel, air, and transmission fluids and filters. For that reason, oil and oil filters are replacement parts similar to tires, brake linings, shock absorbers, etc. Just because oil and oil filters need replacing more often than tires or brake linings does not, taxpayer argues, make them subject to Indiana's gross retail or use taxes. As stated by taxpayer, "there is nothing in 45 IAC 2.2-4-27(d)(4) or otherwise justifying treating them differently than other replacement parts."

Taxpayer has proffered sustainable reasons for supporting its interpretation of the regulation at issue. That supported interpretation of the regulation is sufficient to support taxpayer's argument that oil and oil filters are not subject to either the state's gross retail tax or use tax in the context of taxpayer's rental car business.

FINDING

Taxpayer's protest concerning the assessment of use tax on the purchase and consumption of oil and oil filters, used in regular oil changes for its fleet of rental vehicles, is granted, based on the complete analysis of the applicable statutes and regulations submitted in the request for rehearing.

Rules Affected by Volume 27

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

10 IAC 1.5	RA	03-102	26 IR 3425	**27 IR 946**
10 IAC 1.5-6	N	03-101	26 IR 3374	**27 IR 450**
10 IAC 3-1-1	A	03-167	26 IR 3909	**27 IR 824**
10 IAC 3-1-2	A	03-167	26 IR 3911	**27 IR 825**

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

11 IAC 2-5-5	N	02-324	26 IR 1598	*AROC (26 IR 2134)
11 IAC 3	N	03-165	26 IR 3911	**27 IR 826**

TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

35 IAC 11	N	03-131	26 IR 3678	**27 IR 1164**

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 18	N	02-81	26 IR 1117	*AROC (26 IR 1263)
	N	03-235	27 IR 909	*AROC (27 IR 2079)
50 IAC 19	N	02-342	26 IR 2397	*ARR (26 IR 3885)
				*AROC (27 IR 287)
				27 IR 450
50 IAC 20	N	03-6	27 IR 908	*CPH (27 IR 1613)

TITLE 52 INDIANA BOARD OF TAX REVIEW

52 IAC 2	N	03-179	26 IR 3915	**27 IR 1776**
52 IAC 3	N	03-179	26 IR 3926	**27 IR 1787**
52 IAC 4	N	03-259	27 IR 555	

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 4-1-6	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-6.5	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-7	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.2	N	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.3	N	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.4	N	04-34	*ER (27 IR 1909)
65 IAC 4-2-3	A	03-334	*ER (27 IR 1596)
65 IAC 4-2-5	A	03-334	*ER (27 IR 1596)
65 IAC 4-3-1	A	03-334	*ER (27 IR 1597)
65 IAC 4-3-2	A	03-334	*ER (27 IR 1597)
65 IAC 4-329	N	03-237	*ER (27 IR 192)
65 IAC 4-330	N	03-246	*ER (27 IR 199)
65 IAC 4-331	N	03-247	*ER (27 IR 200)
65 IAC 4-333	N	03-292	*ER (27 IR 891)
65 IAC 4-335	N	03-310	*ER (27 IR 1190)
65 IAC 4-336	N	03-338	*ER (27 IR 1602)
65 IAC 4-337	N	04-28	*ER (27 IR 1900)
65 IAC 4-338	N	04-26	*ER (27 IR 1896)
65 IAC 4-339	N	04-30	*ER (27 IR 1903)
65 IAC 4-340	N	04-31	*ER (27 IR 1905)
65 IAC 4-341	N	04-32	*ER (27 IR 1907)
65 IAC 5-1-2.2	N	04-34	*ER (27 IR 1909)
65 IAC 5-1-2.4	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-2.6	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-6	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-7	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-8	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-11.2	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-12	A	04-34	*ER (27 IR 1910)
65 IAC 5-5-1	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-1.5	N	03-314	*ER (27 IR 1587)
65 IAC 5-5-2	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-3	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-4	A	03-314	*ER (27 IR 1588)
65 IAC 5-5-5	A	03-314	*ER (27 IR 1588)
65 IAC 5-5-6	A	03-314	*ER (27 IR 1589)
65 IAC 5-6-1	A	03-314	*ER (27 IR 1589)
65 IAC 5-6-1.5	N	03-314	*ER (27 IR 1589)
65 IAC 5-6-2	A	03-314	*ER (27 IR 1590)
65 IAC 5-6-3	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-4	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-5	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-6	A	03-314	*ER (27 IR 1593)
65 IAC 5-9-1	A	03-314	*ER (27 IR 1593)
			*ERR (27 IR 1575)
65 IAC 5-9-1.5	N	03-314	*ER (27 IR 1594)
65 IAC 5-9-2	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-3	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-4	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-9	A	03-314	*ER (27 IR 1595)
65 IAC 5-9-12	A	03-314	*ER (27 IR 1595)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 4-1-1	RA	03-132	26 IR 3750	*CPH (27 IR 208)
				27 IR 1295
68 IAC 4-1-2	RA	03-132	26 IR 3751	*CPH (27 IR 208)
				27 IR 1296
68 IAC 4-1-3	RA	03-132	26 IR 3751	*CPH (27 IR 208)
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68 IAC 4-1-4	RA	03-132	26 IR 3751	*CPH (27 IR 208)
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68 IAC 4-1-5	RA	03-132	26 IR 3752	*CPH (27 IR 208)
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68 IAC 4-1-6	RA	03-132	26 IR 3752	*CPH (27 IR 208)
				27 IR 1297
68 IAC 4-1-7	RA	03-132	26 IR 3752	*CPH (27 IR 208)
				27 IR 1297
68 IAC 4-1-8	RA	03-132	26 IR 3753	*CPH (27 IR 208)
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68 IAC 4-1-9	RA	03-132	26 IR 3753	*CPH (27 IR 208)
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68 IAC 4-1-10	RA	03-132	26 IR 3754	*CPH (27 IR 208)
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68 IAC 6-3	N	03-204	27 IR 212	

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1.5-1-19	A	04-21	*ER (27 IR 1911)
71 IAC 3-2-9	A	04-21	*ER (27 IR 1911)
71 IAC 3-9-4	A	04-21	*ER (27 IR 1912)
71 IAC 4-3-15	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-2	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-2	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-3-3	A	04-21	*ER (27 IR 1914)
71 IAC 5.5-4-2	A	04-21	*ER (27 IR 1915)
71 IAC 6-1-3	A	04-21	*ER (27 IR 1915)
71 IAC 6-3-1	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-11	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-15	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-22	R	04-21	*ER (27 IR 1922)
71 IAC 7-1-28	A	04-21	*ER (27 IR 1918)
71 IAC 7-2-8	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-6	A	03-244	*ER (27 IR 205)
71 IAC 7-3-11	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-13	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-2	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-4	A	03-244	*ER (27 IR 205)
71 IAC 7.5-1-15	N	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-1	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-3	A	03-244	*ER (27 IR 206)
71 IAC 7.5-7-5	A	04-21	*ER (27 IR 1920)
71 IAC 8-6-2	A	04-21	*ER (27 IR 1920)
71 IAC 8-11-3	A	04-21	*ER (27 IR 1920)
71 IAC 8.5-5-2	A	04-21	*ER (27 IR 1921)
71 IAC 8.5-11-3	A	04-21	*ER (27 IR 1921)
71 IAC 12-2-15	A	03-293	*ER (27 IR 896)
71 IAC 13.5-3-1	A	04-21	*ER (27 IR 1921)
71 IAC 13.5-3-2	A	04-21	*ER (27 IR 1922)

71 IAC 13.5-3-3	A	04-21		*ER (27 IR 1922)
71 IAC 13.5-3-4	A	04-21		*ER (27 IR 1922)

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 9-1-1	A	03-17	26 IR 2400	**27 IR 451**
105 IAC 9-1-2	A	03-17	26 IR 2400	**27 IR 452**
105 IAC 9-2-1	A	02-231	26 IR 421	**27 IR 7**
105 IAC 9-2-2	R	02-231		**††27 IR 52**
105 IAC 9-2-3	N	02-231		**††27 IR 7**
105 IAC 9-2-4	N	02-231		**††27 IR 7**
105 IAC 9-2-5	N	02-231		**††27 IR 7**
105 IAC 9-2-6	N	02-231		**††27 IR 7**
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105 IAC 9-2-45	N	02-231		**††27 IR 18**
105 IAC 9-2-46	N	02-231		**††27 IR 18**
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105 IAC 9-2-135	N	02-231		**††27 IR 39**
105 IAC 9-2-136	N	02-231		**††27 IR 40**
105 IAC 9-2-137	N	02-231		**††27 IR 40**
105 IAC 9-2-138	N	02-231		**††27 IR 40**
105 IAC 9-2-139	N	02-231		**††27 IR 40**
105 IAC 9-2-140	N	02-231		**††27 IR 41**
105 IAC 9-2-141	N	02-231		**††27 IR 41**
105 IAC 9-2-142	N	02-231		**††27 IR 41**
105 IAC 9-2-143	N	02-231		**††27 IR 42**
105 IAC 9-2-144	N	02-231		**††27 IR 42**
105 IAC 9-2-145	N	02-231		**††27 IR 42**
105 IAC 9-2-146	N	02-231		**††27 IR 42**
105 IAC 9-2-147	N	02-231		**††27 IR 42**
105 IAC 9-2-148	N	02-231		**††27 IR 42**
105 IAC 9-2-149	N	02-231		**††27 IR 43**
105 IAC 9-2-150	N	02-231		**††27 IR 43**
105 IAC 9-2-151	N	02-231		**††27 IR 43**
105 IAC 9-2-152	N	02-231		**††27 IR 43**
105 IAC 9-2-153	N	02-231		**††27 IR 43**
105 IAC 9-2-154	N	02-231		**††27 IR 44**
105 IAC 9-2-155	N	02-231		**††27 IR 44**
105 IAC 9-2-156	N	02-231		**††27 IR 44**
105 IAC 9-2-157	N	02-231		**††27 IR 44**
105 IAC 9-2-158	N	02-231		**††27 IR 45**
105 IAC 9-2-159	N	02-231		**††27 IR 45**
105 IAC 9-2-160	N	02-231		**††27 IR 45**
105 IAC 9-2-161	N	02-231		**††27 IR 46**
105 IAC 9-2-162	N	02-231		**††27 IR 46**
105 IAC 9-2-163	N	02-231		**††27 IR 46**
105 IAC 9-2-164	N	02-231		**††27 IR 47**
105 IAC 9-2-165	N	02-231		**††27 IR 47**
105 IAC 9-2-166	N	02-231		**††27 IR 47**
105 IAC 9-2-167	N	02-231		**††27 IR 47**
105 IAC 9-2-168	N	02-231		**††27 IR 47**
105 IAC 9-2-169	N	02-231		**††27 IR 47**
105 IAC 9-2-170	N	02-231		**††27 IR 48**
105 IAC 9-2-171	N	02-231		**††27 IR 48**
105 IAC 9-2-172	N	02-231		**††27 IR 48**
105 IAC 9-2-173	N	02-231		**††27 IR 49**
105 IAC 9-2-174	N	02-231		**††27 IR 49**
105 IAC 9-2-175	N	02-231		**††27 IR 49**
105 IAC 9-2-176	N	02-231		**††27 IR 49**
105 IAC 9-2-177	N	02-231		**††27 IR 49**
105 IAC 9-2-178	N	02-231		**††27 IR 50**
105 IAC 9-2-179	N	02-231		**††27 IR 50**
105 IAC 9-2-180	N	02-231		**††27 IR 50**
105 IAC 9-2-181	N	02-231		**††27 IR 50**
105 IAC 9-2-182	N	02-231		**††27 IR 51**
105 IAC 9-2-183	N	02-231		**††27 IR 51**
105 IAC 9-2-184	N	02-231		**††27 IR 51**
105 IAC 9-2-185	N	02-231		**††27 IR 51**
105 IAC 9-2-186	N	02-231		**††27 IR 51**
105 IAC 9-2-187	N	02-231		**††27 IR 51**
105 IAC 9-2-188	N	02-231		**††27 IR 52**
105 IAC 9-2-189	N	02-231		**††27 IR 52**
105 IAC 9-2-190	N	02-231		**††27 IR 52**
105 IAC 12-1-2	A	03-58	26 IR 3077	
105 IAC 12-1-5	A	03-58	26 IR 3077	
105 IAC 12-1-14.5	N	03-58	26 IR 3077	
105 IAC 12-1-14.6	N	03-58	26 IR 3077	
105 IAC 12-1-18	A	03-58	26 IR 3077	
105 IAC 12-1-22	A	03-58	26 IR 3077	
105 IAC 12-1-23	A	03-58	26 IR 3078	
105 IAC 12-2-4	A	03-58	26 IR 3078	
105 IAC 12-2-6	A	03-58	26 IR 3078	
105 IAC 12-2-7	A	03-58	26 IR 3078	
105 IAC 12-2-10	A	03-58	26 IR 3078	
105 IAC 12-2-11	A	03-58	26 IR 3078	
105 IAC 12-2-13	A	03-58	26 IR 3079	
105 IAC 12-2-14	A	03-58	26 IR 3079	
105 IAC 12-2-16	A	03-58	26 IR 3079	
105 IAC 12-2-17	A	03-58	26 IR 3080	
105 IAC 12-2-18	N	03-58	26 IR 3080	
105 IAC 12-2-19	N	03-58	26 IR 3080	
105 IAC 12-2-20	N	03-58	26 IR 3080	
105 IAC 12-2-21	N	03-58	26 IR 3081	
105 IAC 12-3-1	A	03-58	26 IR 3082	
105 IAC 12-3-2	A	03-58	26 IR 3082	
105 IAC 12-3-4	A	03-58	26 IR 3082	
105 IAC 12-3-5	A	03-58	26 IR 3083	
105 IAC 12-4-3	A	03-58	26 IR 3084	
105 IAC 12-4-4	A	03-58	26 IR 3084	
105 IAC 12-4-5	A	03-58	26 IR 3084	

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 7-1.2-10	A	03-194	27 IR 558	

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 1-4-3	RA	03-98	26 IR 3425	
240 IAC 1-4-24.1	RA	03-98	26 IR 3425	**27 IR 286**

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 2	N	02-339	26 IR 3679	**27 IR 1552**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	02-328	26 IR 1598	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-3-4	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-4-1	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-4-2	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-5	N	02-328	26 IR 1600	*DAG (27 IR 947)
	N	03-212	27 IR 217	

TITLE 307 INDIANA BOARD OF REGISTRATION FOR SOIL SCIENTISTS

307 IAC	N	03-32	26 IR 2652	*GRAT (27 IR 291) **27 IR 53** *ERR (27 IR 538)

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 1-1-19.5	N	03-296	27 IR 1617	
312 IAC 1-1-27.5	N	03-296	27 IR 1617	
312 IAC 1-1-29.3	N	03-296	27 IR 1617	
312 IAC 2-2-1	A	03-220	27 IR 1205	
312 IAC 2-2-4	A	03-220	27 IR 1205	
312 IAC 2-3-1	A	03-220	27 IR 1205	
312 IAC 5-6-5	A	03-92	27 IR 220	
312 IAC 5-6-6	A	03-29	26 IR 2660	**27 IR 59**
312 IAC 6	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 7	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 8-1-2	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-1-4	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-2-3	A	03-50	26 IR 3086	**27 IR 456**
312 IAC 8-2-6	A	03-50	26 IR 3088	**27 IR 457**
312 IAC 8-2-9	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 8-2-11	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 9	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 9-1-9.5	N	03-311	27 IR 1946	
312 IAC 9-1-11.5	N	03-311	27 IR 1946	
312 IAC 9-2-11	A	03-50	26 IR 3089	**27 IR 459**
312 IAC 9-3-2	A	03-311	27 IR 1946	
312 IAC 9-3-3	A	03-311	27 IR 1947	
312 IAC 9-3-4	A	03-311	27 IR 1948	

312 IAC 9-3-10	A	03-311	27 IR 1949	
312 IAC 9-3-11	A	03-311	27 IR 1949	
312 IAC 9-3-12	A	03-311	27 IR 1949	
312 IAC 9-3-13	A	03-311	27 IR 1950	
312 IAC 9-3-14	A	03-311	27 IR 1950	
312 IAC 9-3-15	A	03-311	27 IR 1950	
312 IAC 9-3-17	A	03-311	27 IR 1950	
312 IAC 9-4-7	R	03-311	27 IR 1966	
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	
312 IAC 9-4-14	A	03-311	27 IR 1952	
312 IAC 9-5-4	A	03-311	27 IR 1953	
312 IAC 9-5-6	A	03-311	27 IR 1953	
312 IAC 9-5-7	A	03-311	27 IR 1953	
312 IAC 9-5-9	A	03-311	27 IR 1955	
312 IAC 9-5-11	N	03-311	27 IR 1956	
312 IAC 9-6-9	A	03-311	27 IR 1957	
312 IAC 9-7-2	A	03-311	27 IR 1957	
312 IAC 9-7-6	A	03-311	27 IR 1959	
312 IAC 9-7-13	A	03-311	27 IR 1960	
312 IAC 9-10-3	A	03-35	26 IR 3374	**27 IR 1165**
312 IAC 9-10-4	A	03-149	27 IR 246	**27 IR 1789**
312 IAC 9-10-9	A	03-311	27 IR 1960	
312 IAC 9-10-9.5	N	03-311	27 IR 1961	
312 IAC 9-10-10	A	03-311	27 IR 1962	
312 IAC 9-10-13.5	N	03-311	27 IR 1963	
312 IAC 9-10-17	A	03-311	27 IR 1964	
312 IAC 9-11-1	A	03-311	27 IR 1964	
312 IAC 9-11-2	A	03-311	27 IR 1965	
312 IAC 9-11-14	A	03-311	27 IR 1965	
312 IAC 10-2-33.5	N	03-296	27 IR 1617	
312 IAC 10-5-0.3	N	03-215	27 IR 1940	
312 IAC 10-5-0.6	N	03-215	27 IR 1940	
312 IAC 10-5-3	A	03-215	27 IR 1941	
312 IAC 10-5-4	A	03-215	27 IR 1941	
312 IAC 10-5-5	A	03-215	27 IR 1942	
312 IAC 10-5-6	A	03-215	27 IR 1943	
312 IAC 10-5-7	A	03-215	27 IR 1944	
312 IAC 10-5-8	A	03-215	27 IR 1945	
312 IAC 11-3-1	A	03-203	27 IR 1201	
312 IAC 11-4-3	A	03-203	27 IR 1202	
312 IAC 11-5-1	A	03-30	26 IR 2661	**27 IR 61**
312 IAC 11-5-2	A	03-296	27 IR 1617	
312 IAC 14	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 15	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 16-1-9.5	N	03-251	27 IR 1206	
312 IAC 16-1-39.5	N	03-251	27 IR 1206	
312 IAC 16-1-44.6	N	03-251	27 IR 1206	
312 IAC 16-5-15	A	03-251	27 IR 1206	
312 IAC 16-5-19	A	03-251	27 IR 1207	
312 IAC 18-3-12	A	03-214	27 IR 1203	
312 IAC 18-3-15	N	03-213	27 IR 559	
312 IAC 18-3-16	N	03-213	27 IR 560	
312 IAC 18-3-17	N	03-213	27 IR 560	
312 IAC 18-5-2	A	03-213	27 IR 561	
312 IAC 18-5-4	A	03-91	26 IR 3375	**27 IR 1166**
312 IAC 19-1-3	A	03-296	27 IR 1617	
312 IAC 20-2-1.7	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.3	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.7	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-3-3	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-5	N	02-329	26 IR 2658	**27 IR 452**
312 IAC 24	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 25-1-8	A	03-93	27 IR 221	
312 IAC 25-1-75.5	N	03-93	27 IR 222	
312 IAC 25-1-155.5	N	03-93	27 IR 222	
312 IAC 25-4-17	A	03-93	27 IR 222	
312 IAC 25-4-44		00-285		*ERR (27 IR 1890)
312 IAC 25-4-45	A	03-93	27 IR 223	
		00-285		*ERR (27 IR 1890)
312 IAC 25-4-49	A	03-93	27 IR 224	
312 IAC 25-4-87	A	03-93	27 IR 225	
312 IAC 25-4-102	A	03-93	27 IR 226	
312 IAC 25-4-105.5	N	03-93	27 IR 227	
312 IAC 25-4-113	A	03-93	27 IR 228	
312 IAC 25-4-114	A	03-93	27 IR 228	
312 IAC 25-4-115	A	03-93	27 IR 229	
312 IAC 25-4-118	A	03-93	27 IR 230	
312 IAC 25-5-7	A	03-93	27 IR 231	
312 IAC 25-5-16	A	03-93	27 IR 232	
312 IAC 25-6-17	A	03-93	27 IR 233	
312 IAC 25-6-20	A	03-93	27 IR 235	
312 IAC 25-6-23	A	03-93	27 IR 237	
312 IAC 25-6-25	A	03-93	27 IR 238	
312 IAC 25-6-31	A	03-169	27 IR 248	
312 IAC 25-6-66	A	03-93	27 IR 238	
312 IAC 25-6-81	A	03-93	27 IR 239	
312 IAC 25-6-84	A	03-93	27 IR 241	
312 IAC 25-6-130	A	03-93	27 IR 243	
312 IAC 25-7-1	A	03-93	27 IR 244	
312 IAC 25-7-20	A	03-93	27 IR 246	
312 IAC 25-9-5	A	03-169	27 IR 249	
312 IAC 25-9-8	A	03-169	27 IR 249	

TITLE 326 AIR POLLUTION CONTROL BOARD

326 IAC 1-1-3	A	02-337	26 IR 1997	
326 IAC 1-1-3.5	A	02-337	26 IR 1997	
326 IAC 1-2-65	A	02-337	26 IR 1997	
326 IAC 1-2-90	A	02-337	26 IR 1998	
326 IAC 1-3-4	A	03-69	26 IR 3376	
326 IAC 1-4-1	A	03-70	26 IR 3092	**27 IR 1167**
326 IAC 2-1.1-7	A	03-67	27 IR 1981	
326 IAC 2-2-1	A	03-68	27 IR 250	
	A	03-67	27 IR 1983	
326 IAC 2-2-2	A	03-67	27 IR 1993	
326 IAC 2-2-3	A	03-67	27 IR 1995	
326 IAC 2-2-4	A	03-67	27 IR 1995	
326 IAC 2-2-5	A	03-67	27 IR 1996	
326 IAC 2-2-6	A	03-68	27 IR 256	
	A	03-67	27 IR 1997	
326 IAC 2-2-7	A	03-67	27 IR 1998	
326 IAC 2-2-8	A	03-67	27 IR 1998	
326 IAC 2-2-10	A	03-67	27 IR 1999	
326 IAC 2-2-12	A	03-68	27 IR 257	
326 IAC 2-2-13	A	02-337	26 IR 1998	
326 IAC 2-2-16	A	02-337	26 IR 1999	
326 IAC 2-2.2	N	03-67	27 IR 2000	
326 IAC 2-2.3	N	03-67	27 IR 2004	
326 IAC 2-2.4	N	03-67	27 IR 2005	
326 IAC 2-2.5	R	03-67	27 IR 2048	
326 IAC 2-2.6	N	03-67	27 IR 2013	
326 IAC 2-3-1	A	02-337	26 IR 2000	
	A	03-67	27 IR 2014	
326 IAC 2-3-2	A	03-67	27 IR 2023	
326 IAC 2-3-3	A	03-67	27 IR 2025	
326 IAC 2-3.2	N	03-67	27 IR 2027	
326 IAC 2-3.3	N	03-67	27 IR 2032	
326 IAC 2-3.4	N	03-67	27 IR 2033	
326 IAC 2-5.1-4	A	03-67	27 IR 2041	
326 IAC 2-6-1	A	01-249	24 IR 3700	*CPH (24 IR 4012)
				*CPH (27 IR 551)
326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
				*CPH (27 IR 551)
326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
				*CPH (27 IR 551)
326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
				*CPH (27 IR 551)
	A	02-337	26 IR 2005	
326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (24 IR 4012)
				*CPH (27 IR 551)

326 IAC 2-7-3	A	02-337	26 IR 2006	
326 IAC 2-7-8	A	02-337	26 IR 2006	
326 IAC 2-7-10.5	A	03-67	27 IR 2041	
326 IAC 2-7-11	A	03-67	27 IR 2045	
326 IAC 2-7-12	A	03-67	27 IR 2046	
326 IAC 2-7-18	A	02-337	26 IR 2007	
326 IAC 2-8-3	A	02-337	26 IR 2008	
326 IAC 2-9-7	A	02-337	26 IR 2009	
326 IAC 2-9-8	A	02-337	26 IR 2010	
326 IAC 2-9-9	A	02-337	26 IR 2012	
326 IAC 2-9-10	A	02-337	26 IR 2013	
326 IAC 2-9-13	A	02-337	26 IR 2014	
326 IAC 3-4-1	A	02-337	26 IR 2016	
326 IAC 3-4-3	A	02-337	26 IR 2016	
326 IAC 3-5-2	A	02-337	26 IR 2017	
326 IAC 3-5-3	A	02-337	26 IR 2019	
326 IAC 3-5-4	A	02-337	26 IR 2019	
326 IAC 3-5-5	A	02-337	26 IR 2020	
326 IAC 3-6-1	A	02-337	26 IR 2022	
326 IAC 3-6-3	A	02-337	26 IR 2022	
326 IAC 3-6-5	A	02-337	26 IR 2023	
326 IAC 3-7-2	A	02-337	26 IR 2024	
326 IAC 3-7-4	A	02-337	26 IR 2025	
326 IAC 5-1-2	A	01-407	26 IR 2026	*CPH (26 IR 2391)
326 IAC 5-1-4	A	02-337	26 IR 2026	
326 IAC 5-1-5	A	02-337	26 IR 2027	
326 IAC 6-1-10.1	A	01-407	26 IR 1970	*CPH (26 IR 2391) **27 IR 61**
326 IAC 6-1-10.2	A	01-407	26 IR 1994	*CPH (26 IR 2391) **27 IR 85**
326 IAC 7-2-1	A	02-337	26 IR 2028	
326 IAC 7-4-10	A	02-337	26 IR 2029	
326 IAC 8-1-4	A	02-337	26 IR 2030	
326 IAC 8-4-6	A	02-337	26 IR 2032	
326 IAC 8-4-9	A	02-337	26 IR 2035	
326 IAC 8-7-7	A	02-337	26 IR 2036	
326 IAC 8-9-2	A	02-337	26 IR 2037	
326 IAC 8-9-3	A	02-337	26 IR 2037	
326 IAC 8-9-4	A	02-337	26 IR 2038	
326 IAC 8-9-5	A	02-337	26 IR 2040	
326 IAC 8-9-6	A	02-337	26 IR 2042	
326 IAC 8-10-7	A	02-337	26 IR 2044	
326 IAC 8-11-2	A	02-337	26 IR 2044	
326 IAC 8-11-6	A	02-337	26 IR 2046	
326 IAC 8-11-7	A	02-337	26 IR 2050	
326 IAC 8-12-3	A	02-337	26 IR 2050	
326 IAC 8-12-5	A	02-337	26 IR 2052	
326 IAC 8-12-6	A	02-337	26 IR 2053	
326 IAC 8-12-7	A	02-337	26 IR 2054	
326 IAC 8-13-5	A	02-337	26 IR 2055	
326 IAC 10-1-2	A	02-337	26 IR 2056	
326 IAC 10-1-4	A	02-337	26 IR 2057	
326 IAC 10-1-5	A	02-337	26 IR 2059	
326 IAC 10-1-6	A	02-337	26 IR 2059	
326 IAC 11-7-1	A	02-337	26 IR 2061	
326 IAC 13-1.1-1	A	02-337	26 IR 2062	
326 IAC 13-1.1-8	A	02-337	26 IR 2063	
326 IAC 13-1.1-10	A	02-337	26 IR 2063	
326 IAC 13-1.1-13	A	02-337	26 IR 2064	
326 IAC 13-1.1-14	A	02-337	26 IR 2065	
326 IAC 13-1.1-16	A	02-337	26 IR 2066	
326 IAC 14-1-1	A	02-337	26 IR 2066	
326 IAC 14-1-2	A	02-337	26 IR 2067	
326 IAC 14-1-4	R	02-337	26 IR 2099	
326 IAC 14-3-1	A	02-337	26 IR 2067	
326 IAC 14-4-1	A	02-337	26 IR 2067	
326 IAC 14-5-1	A	02-337	26 IR 2068	
326 IAC 14-7-1	A	02-337	26 IR 2068	
326 IAC 14-8-1	A	02-337	26 IR 2068	
326 IAC 14-8-3	A	02-337	26 IR 2069	
326 IAC 14-8-4	A	02-337	26 IR 2069	
326 IAC 14-8-5	A	02-337	26 IR 2069	
326 IAC 14-9-5	A	02-337	26 IR 2070	
326 IAC 14-9-7	A	02-337	26 IR 2071	
326 IAC 14-9-9	A	02-337	26 IR 2071	
326 IAC 14-10-1	A	02-337	26 IR 2072	
326 IAC 14-10-2	A	02-337	26 IR 2074	
326 IAC 14-10-3	A	02-337	26 IR 2076	
326 IAC 14-10-4	A	02-337	26 IR 2078	
326 IAC 15-1-2	A	02-337	26 IR 2080	
326 IAC 15-1-4	A	02-337	26 IR 2083	
326 IAC 16-3-1	A	02-337	26 IR 2084	
326 IAC 18-1-2	A	02-337	26 IR 2084	
326 IAC 18-1-5	A	02-337	26 IR 2086	
326 IAC 18-1-7	A	02-337	26 IR 2087	
326 IAC 18-1-8	A	02-337	26 IR 2088	
326 IAC 18-2-2	A	02-337	26 IR 2088	
326 IAC 18-2-3	A	02-337	26 IR 2090	
326 IAC 18-2-6	A	02-337	26 IR 2096	
326 IAC 18-2-7	A	02-337	26 IR 2097	
326 IAC 20-49	N	02-336	26 IR 3090	
326 IAC 20-50	N	02-336	26 IR 3090	
326 IAC 20-51	N	02-336	26 IR 3090	
326 IAC 20-52	N	02-336	26 IR 3091	
326 IAC 20-53	N	02-336	26 IR 3091	
326 IAC 20-54	N	02-336	26 IR 3091	
326 IAC 20-55	N	02-336	26 IR 3091	
326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937)
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937)
326 IAC 22-1-1	A	02-337	26 IR 2098	
326 IAC 23-1-4	A	02-189	26 IR 2407	**27 IR 459**
326 IAC 23-1-5	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-5.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-6.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.6	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-9	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-10	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-12.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-17	A	02-189	26 IR 2409	**27 IR 462**
326 IAC 23-1-21	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-21.5	N	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-22	A	02-189	26 IR 2437	**27 IR 462**
326 IAC 23-1-23	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-26.5	N	02-189	26 IR 2410	
326 IAC 23-1-27	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-27.5	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-31	A	02-337	26 IR 2099	
326 IAC 23-1-32.1	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-32.2	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.8	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-37	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-40	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-42	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-43	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-44	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-45	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-46	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-47	R	02-189	26 IR 2437	**27 IR 490**

326 IAC 23-1-48.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52.5	N	02-189	26 IR 2411	**27 IR 464**
326 IAC 23-1-54.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-55.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.7	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.1	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.5	N	02-189	26 IR 2412	**27 IR 465**
326 IAC 23-1-60.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-61.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-63	A	02-189	26 IR 2413	**27 IR 466**
326 IAC 23-1-64	A	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.5	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.6	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.7	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-71	N	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-1	A	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-3	A	02-189	26 IR 2415	**27 IR 467**
326 IAC 23-2-4	A	02-189	26 IR 2416	**27 IR 469**
326 IAC 23-2-5	A	02-189	26 IR 2418	**27 IR 471**
326 IAC 23-2-6	A	02-189	26 IR 2419	**27 IR 471**
326 IAC 23-2-6.5	N	02-189	26 IR 2419	**27 IR 472**
326 IAC 23-2-7	A	02-189	26 IR 2420	**27 IR 473**
326 IAC 23-2-8	A	02-189	26 IR 2421	**27 IR 474**
326 IAC 23-2-9	A	02-189	26 IR 2422	**27 IR 474**
326 IAC 23-3-1	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-2	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-3	A	02-189	26 IR 2423	**27 IR 476**
326 IAC 23-3-5	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-7	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-11	A	02-189	26 IR 2428	**27 IR 480**
326 IAC 23-3-12	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-3-13	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-4-1	A	02-189	26 IR 2429	**27 IR 481**
326 IAC 23-4-2	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-3	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-4	A	02-189	26 IR 2430	**27 IR 483**
326 IAC 23-4-5	A	02-189	26 IR 2431	**27 IR 484**
326 IAC 23-4-6	A	02-189	26 IR 2432	**27 IR 485**
326 IAC 23-4-7	A	02-189	26 IR 2434	**27 IR 486**
326 IAC 23-4-9	A	02-189	26 IR 2434	**27 IR 487**
326 IAC 23-4-11	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-12	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-13	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-5	N	02-189	26 IR 2436	**27 IR 489**

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366) **27 IR 1563**
327 IAC 5-4-3	A	01-51	26 IR 3698	*CPH (27 IR 1195)
327 IAC 5-4-6				*ERR (27 IR 191)
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 830**
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 830**
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 831**
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 831**
327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 832**
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 832**
	A	02-327	26 IR 3098	*CPH (26 IR 3366) **27 IR 1563**
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 832**
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 833**
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 833**
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 834**
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 834**
327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 836**
327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 837**
327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 838**
327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 840**
327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 843**
327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 843**
327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 844**
327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 863**
327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 844**
327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 845**

327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 845
327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 848
327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 857
327 IAC 15-6-7.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 858
327 IAC 15-6-8.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 859
327 IAC 15-6-9	A	01-95		††**27 IR 859**
327 IAC 15-6-10	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 859
327 IAC 15-6-11	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 860
327 IAC 15-6-12	N	01-95	26 IR 1644	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 860
327 IAC 15-13				*ERR (27 IR 191)
327 IAC 15-14	N	02-327	26 IR 3098	*CPH (26 IR 3366)
				27 IR 1563
327 IAC 15-15	N	01-51	26 IR 3701	*CPH (27 IR 1195)

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
				27 IR 1874
329 IAC 3.1-4-1	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
				27 IR 1874
329 IAC 3.1-7-2	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
				27 IR 1875
329 IAC 3.1-9-2	A	02-235	26 IR 1241	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
				27 IR 1875
	A	02-160	27 IR 912	
329 IAC 3.1-10-2	A	02-235	26 IR 1242	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
				27 IR 1876
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)

329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)

329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 10-1-2.5	N	00-185		††**27 IR 1791**
329 IAC 10-1-4	A	00-185	26 IR 432	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1791
329 IAC 10-1-4.5	N	00-185	26 IR 433	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1792
329 IAC 10-2-6	R	00-185	26 IR 511	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1873
329 IAC 10-2-11	A	00-185	26 IR 433	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1792
329 IAC 10-2-29	R	00-185	26 IR 511	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1873
329 IAC 10-2-29.5	N	01-288	26 IR 1653	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 10-2-32	A	01-288	26 IR 1653	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 10-2-33	R	00-185	26 IR 511	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1873
329 IAC 10-2-41	A	00-185	26 IR 433	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1792
329 IAC 10-2-41.1	A	00-185	26 IR 434	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1793
329 IAC 10-2-53	R	00-185	26 IR 511	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1873
329 IAC 10-2-60	R	00-185	26 IR 511	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1873

329 IAC 10-2-63.5	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-64	A	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-66.1	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-66.2	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-66.3	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-69	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1793**
329 IAC 10-2-72.1	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-74	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1794**
329 IAC 10-2-75	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1794**
329 IAC 10-2-75.1	N	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1794**
329 IAC 10-2-76	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-96	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1794**
329 IAC 10-2-97.1	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1794**
329 IAC 10-2-99	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-100	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-105.3	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-106	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3366) *CPH (26 IR 3073) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-109	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-111.5	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-112	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1795**
329 IAC 10-2-115	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-116	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-117	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-121.1	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1796**
329 IAC 10-2-127	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**

329 IAC 10-2-128	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-130	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-132.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1796**
329 IAC 10-2-132.3	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1796**
329 IAC 10-2-135.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-135.5	N	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-142.5	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1796**
329 IAC 10-2-147.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-149	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-151	A	00-185		††**27 IR 1796**
329 IAC 10-2-158	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1796**
329 IAC 10-2-165.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-172.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-174	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-177	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-179	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-181.2	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-181.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-181.6	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-187.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-2-197.1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-199.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-201.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-203	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-205	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-3-1	A	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1797**
329 IAC 10-3-2	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1798**
329 IAC 10-3-3	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1798**
329 IAC 10-5-1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)

329 IAC 10-6-4	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1799**
329 IAC 10-7.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-7.2	N	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.2	N	01-288	26 IR 1657	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-2	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-4	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-10-1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1799**
329 IAC 10-10-2	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1801**
329 IAC 10-11-2.1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1801**
329 IAC 10-11-2.5	A	00-185	26 IR 441	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1802**
329 IAC 10-11-5.1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1803**
329 IAC 10-11-6	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1804**
329 IAC 10-12-1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1804**
329 IAC 10-13-1	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1806**
329 IAC 10-13-5	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1806**
329 IAC 10-13-6	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1806**
329 IAC 10-14-1	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1807**
329 IAC 10-14-2	A	01-288	26 IR 1661	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-15-1	A	00-185	26 IR 447	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1808**
329 IAC 10-15-2	A	00-185	26 IR 448	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1809**
329 IAC 10-15-5	A	00-185	26 IR 449	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1810**
329 IAC 10-15-8	A	00-185	26 IR 450	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1810**
329 IAC 10-15-12	N	00-185	26 IR 451	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1812**
329 IAC 10-16-1	A	00-185	26 IR 452	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1813**
329 IAC 10-16-8	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1814**
329 IAC 10-17-2	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1814**

329 IAC 10-17-7	A	00-185	26 IR 454	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1815**
329 IAC 10-17-9	A	00-185	26 IR 456	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1817**
329 IAC 10-17-12	A	00-185	26 IR 457	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1818**
329 IAC 10-17-18	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1819**
329 IAC 10-19-1	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1819**
329 IAC 10-20-3	A	00-185	26 IR 459	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1821**
329 IAC 10-20-8	A	00-185	26 IR 460	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1821**
329 IAC 10-20-11	A	00-185	26 IR 461	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1822**
329 IAC 10-20-12	A	00-185	26 IR 462	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1823**
329 IAC 10-20-13	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1824**
329 IAC 10-20-14.1	A	01-288	26 IR 1662	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-20-20	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1824**
329 IAC 10-20-24	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1825**
329 IAC 10-20-26	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1825**
329 IAC 10-20-28	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1825**
329 IAC 10-20-29	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-21-1	A	00-185	26 IR 465	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1826**
329 IAC 10-21-2	A	00-185	26 IR 468	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1830**
329 IAC 10-21-4	A	00-185	26 IR 474	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1835**
329 IAC 10-21-6	A	00-185	26 IR 477	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1838**
329 IAC 10-21-7	A	00-185	26 IR 479	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1840**
329 IAC 10-21-8	A	00-185	26 IR 480	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1841**
329 IAC 10-21-9	A	00-185	26 IR 481	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1842**
329 IAC 10-21-10	A	00-185	26 IR 482	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1843**

329 IAC 10-21-13	A	00-185	26 IR 484	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1845**
329 IAC 10-21-15	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1849**
329 IAC 10-21-16	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1850**
329 IAC 10-21-17	N	00-185		††**27 IR 1855**
329 IAC 10-22-2	A	00-185	26 IR 493	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1855**
329 IAC 10-22-3	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1856**
329 IAC 10-22-5	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1856**
329 IAC 10-22-6	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1856**
329 IAC 10-22-7	A	00-185	26 IR 495	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1857**
329 IAC 10-22-8	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1858**
329 IAC 10-23-2	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1859**
329 IAC 10-23-3	A	00-185	26 IR 497	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1859**
329 IAC 10-23-4	A	00-185	26 IR 498	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1860**
329 IAC 10-24-4	A	00-185	26 IR 499	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1861**
329 IAC 10-28-21	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-28-24	A	01-288	26 IR 1664	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-29-1	A	00-185	26 IR 499	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1862**
329 IAC 10-30-4	A	00-185	26 IR 500	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1862**
329 IAC 10-36-19	A	01-288	26 IR 1665	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-37-4	A	00-185	26 IR 501	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1863**
329 IAC 10-39-1	A	00-185	26 IR 501	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1864**
329 IAC 10-39-2	A	00-185	26 IR 502	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1864**
329 IAC 10-39-3	A	00-185	26 IR 508	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1870**
329 IAC 10-39-7	A	00-185	26 IR 509	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1871**
329 IAC 10-39-9	A	00-185	26 IR 509	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) **27 IR 1871**

329 IAC 10-39-10	A	00-185	26 IR 510	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
				27 IR 1872
329 IAC 11-2-19.5	N	01-288	26 IR 1665	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-2-39	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-2-44	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-3-2	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-6-1	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-7	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-2	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-2.5	N	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-3	A	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-9-6	N	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-13-4	A	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-13-6	A	01-288	26 IR 1668	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-15-1	A	01-288	26 IR 1668	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-19-2	A	01-288	26 IR 1669	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-19-3	A	01-288	26 IR 1670	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-20-1	A	01-288	26 IR 1670	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-4	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-5	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-6	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-7	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-8	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 12-8-4	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 13-3-1	A	01-288	26 IR 1673	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

345 IAC 1-3-22	A	03-9	26 IR 3108	**27 IR 490**
345 IAC 1-3-30	A	02-323	26 IR 3102	**27 IR 87**
345 IAC 1-3-31	N	02-323	26 IR 3104	**27 IR 89**
345 IAC 1-3-32	N	02-323	26 IR 3104	**27 IR 90**
345 IAC 1-5-1	A	03-9	26 IR 3108	**27 IR 491**
345 IAC 1-6-2	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 1-6-3	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 2-7-2.4	N	02-323	26 IR 3106	**27 IR 92**
345 IAC 2-7-2.5	N	02-323	26 IR 3107	**27 IR 92**
345 IAC 2-7-3	A	02-323	26 IR 3107	**27 IR 92**

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-11	N	02-332	26 IR 3109	*CPH (26 IR 3673)
				*AROC (27 IR 1652)
				27 IR 1877

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-8-2	A	03-164	26 IR 3929	*NRA (27 IR 1194)
405 IAC 1-8-3	A	03-164	26 IR 3929	*NRA (27 IR 1194)
405 IAC 1-10.5-2	A	03-164	26 IR 3930	*NRA (27 IR 1194)
	A	03-236	27 IR 914	*NRA (27 IR 1935)
405 IAC 1-10.5-3	A	03-18	26 IR 3378	*NRA (27 IR 207)
				27 IR 863
	A	03-164	26 IR 3932	*NRA (27 IR 1194)
	A	03-236	27 IR 916	*NRA (27 IR 1935)
405 IAC 1-17-1	A	03-61	26 IR 3111	*NRA (26 IR 3670)
				27 IR 93
405 IAC 1-17-2	A	03-61	26 IR 3111	*NRA (26 IR 3670)
				27 IR 94
405 IAC 1-17-3	A	03-61	26 IR 3112	*NRA (26 IR 3670)
				27 IR 94
405 IAC 1-17-4	A	03-61	26 IR 3113	*NRA (26 IR 3670)
				27 IR 95
405 IAC 1-17-5	A	03-61	26 IR 3113	*NRA (26 IR 3670)
				27 IR 96
405 IAC 1-17-6	A	03-61	26 IR 3114	*NRA (26 IR 3670)
				27 IR 96
405 IAC 1-17-7	A	03-61	26 IR 3114	*NRA (26 IR 3670)
				27 IR 97
405 IAC 1-17-9	A	03-61	26 IR 3115	*NRA (26 IR 3670)
				27 IR 98
405 IAC 1-21	N	03-184	27 IR 258	*NRA (27 IR 1194)
				*ARR (27 IR 1891)
405 IAC 2-3-1.1	A	03-205	27 IR 262	*NRA (27 IR 1612)
405 IAC 2-3-10	A	03-263	27 IR 1210	
405 IAC 2-8-1	A	03-134	26 IR 3706	*AROC (27 IR 2080)
405 IAC 2-8-1.1	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-3	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-7	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-7.1	N	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-8	A	03-134	26 IR 3708	*AROC (27 IR 2080)
405 IAC 2-10-9	A	03-134	26 IR 3708	*AROC (27 IR 2080)
405 IAC 2-10-10	R	03-134	26 IR 3709	*AROC (27 IR 2080)
405 IAC 2-10-11	N	03-134	26 IR 3709	*AROC (27 IR 2080)
405 IAC 5-3-13	A	03-66	26 IR 3381	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
				*ARR (27 IR 1576)
				*NRA (27 IR 1612)
405 IAC 5-19-3	A	03-207	27 IR 267	

405 IAC 5-20-1	A	03-184	27 IR 259	*NRA (27 IR 1194)
405 IAC 5-20-2	A	03-184	27 IR 260	*NRA (27 IR 1194)
405 IAC 5-20-3.1	N	03-184	27 IR 260	*NRA (27 IR 1194)
405 IAC 5-20-4	A	03-184	27 IR 261	*NRA (27 IR 1194)
405 IAC 5-20-7	A	03-184	27 IR 261	*NRA (27 IR 1194)
405 IAC 5-21-1	A	03-66	26 IR 3381	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
				*ARR (27 IR 1576)
				*NRA (27 IR 1612)
405 IAC 5-21-7	A	03-66	26 IR 3382	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
				*ARR (27 IR 1576)
				*NRA (27 IR 1612)
405 IAC 5-21-8	N	03-66	26 IR 3382	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
				*ARR (27 IR 1576)
				*NRA (27 IR 1612)
405 IAC 5-24-7	A	03-206	27 IR 266	*NRA (27 IR 1194)
405 IAC 6-2-3	A	03-260	27 IR 919	*NRA (27 IR 1935)
405 IAC 6-2-5	A	03-260	27 IR 919	*NRA (27 IR 1935)
405 IAC 6-2-21	R	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-2-22	R	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-3-3	A	03-260	27 IR 919	*NRA (27 IR 1935)
405 IAC 6-4-2	A	03-260	27 IR 919	*NRA (27 IR 1935)
405 IAC 6-4-3	A	03-260	27 IR 920	*NRA (27 IR 1935)
405 IAC 6-5-1	A	03-260	27 IR 920	*NRA (27 IR 1935)
405 IAC 6-5-2	A	03-260	27 IR 920	*NRA (27 IR 1935)
405 IAC 6-5-3	A	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-5-4	A	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-5-6	A	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-6-3	R	03-260	27 IR 921	*NRA (27 IR 1935)
405 IAC 6-6-4	R	03-260	27 IR 921	*NRA (27 IR 1935)

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-2.3-47	A	03-4	26 IR 3131	**27 IR 865**
410 IAC 1-2.3-48	A	03-4	26 IR 3134	**27 IR 869**
410 IAC 1-2.3-97.5	N	03-4	26 IR 3135	**27 IR 870**
410 IAC 1-7	N	03-161	27 IR 2048	
410 IAC 3-3-7.1	A	03-19	26 IR 3385	*ARR (27 IR 539)
				27 IR 1568
410 IAC 6-6-1				*ERR (27 IR 1890)
410 IAC 6-6-8				*ERR (27 IR 1890)
410 IAC 6-6-13				*ERR (27 IR 1890)
410 IAC 6-6-14.1				*ERR (27 IR 1890)
410 IAC 6-7.2-17	A	02-295	26 IR 2662	**27 IR 98**
410 IAC 6-7.2-29	A	02-295	26 IR 2662	**27 IR 99**
410 IAC 6-7.2-30	A	02-295	26 IR 2663	**27 IR 99**
410 IAC 6-8.1	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 6-8.2	N	02-321	26 IR 3116	*CPH (26 IR 3368)
410 IAC 6-9-3				*ERR (26 IR 3884)
410 IAC 6-10	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 7-19	R	02-317	26 IR 3385	*ARR (27 IR 878)
				27 IR 1169
410 IAC 7-23	N	02-317	26 IR 3383	*ARR (27 IR 878)
				27 IR 1167
410 IAC 15-1.5-8	A	03-216	27 IR 1620	
410 IAC 15-1.7-1	A	03-216	27 IR 1622	
410 IAC 15-2.5-7	A	03-216	27 IR 1623	
410 IAC 15-2.7-1	A	03-216	27 IR 1625	
410 IAC 16.2-1.1-11.5	N	03-275	27 IR 2051	
410 IAC 16.2-3.1-3	A	03-275	27 IR 2051	
410 IAC 16.2-3.1-4	A	03-275	27 IR 2053	
410 IAC 16.2-3.1-13	A	03-275	27 IR 2054	
410 IAC 16.2-3.1-14	A	03-275	27 IR 2056	
410 IAC 16.2-3.1-19	A	03-90	27 IR 922	*CPH (27 IR 1613)
410 IAC 16.2-3.1-26	A	03-275	27 IR 2059	
410 IAC 16.2-3.1-29	A	03-275	27 IR 2060	
410 IAC 16.2-5-1.2	A	03-275	27 IR 2060	
410 IAC 16.2-5-1.3	A	03-275	27 IR 2066	
410 IAC 16.2-5-1.4	A	03-275	27 IR 2067	
410 IAC 16.2-5-2	A	03-275	27 IR 2069	
410 IAC 16.2-5-4	A	03-275	27 IR 2069	
410 IAC 16.2-8-1	A	03-90	27 IR 924	*CPH (27 IR 1613)

TITLE 414 HOSPITAL COUNCIL

414 IAC	N	03-277	27 IR 1625	

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 5.2	N	03-57	26 IR 3386	*NRA (26 IR 3902)
				27 IR 492

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 3.5-1-1	A	03-180	27 IR 269	
460 IAC 3.5-2-1	A	03-180	27 IR 269	
460 IAC 5-1-13	A	02-151	26 IR 524	
460 IAC 6-2-2	A	03-123	26 IR 3935	
460 IAC 6-2-3	A	03-123	26 IR 3935	
460 IAC 6-3-2.1	N	02-326	26 IR 2664	**27 IR 101**
460 IAC 6-3-5.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-5.2	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-6.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-10.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.2	N	03-123	26 IR 3935	
460 IAC 6-3-15.3	N	02-326	26 IR 2665	**††27 IR 101**
460 IAC 6-3-18	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-25	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-29.5	N	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-31	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-32	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-38.5	N	02-326	26 IR 2666	**27 IR 103**
460 IAC 6-3-38.6	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-41.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-52.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-56	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-4-1	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-5-4	A	02-326	26 IR 2668	**27 IR 104**
460 IAC 6-5-7	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-21	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-32	N	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-33	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-34	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-35	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-36	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-2	A	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-3	A	02-326	26 IR 2670	**27 IR 107**
460 IAC 6-7-2	A	02-326	26 IR 2671	**27 IR 107**
460 IAC 6-7-3	A	02-326	26 IR 2671	**27 IR 108**
460 IAC 6-9-5	A	02-326	26 IR 2672	**27 IR 108**
460 IAC 6-9-7	N	02-326	26 IR 2673	**27 IR 109**
460 IAC 6-10-5	A	02-326	26 IR 2673	**27 IR 110**
460 IAC 6-10-8	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-10-13	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-13-2	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-14-4	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-14-6	N	03-123	26 IR 3935	
460 IAC 6-14-7	N	03-123	26 IR 3935	
460 IAC 6-15-2	A	03-123	26 IR 3935	
460 IAC 6-17-3	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-17-4	A	02-326	26 IR 2676	**27 IR 112**
460 IAC 6-19-6	A	02-326	26 IR 2676	**27 IR 113**
	A	03-123	26 IR 3936	
460 IAC 6-24-1	A	02-236	26 IR 2677	**27 IR 113**
460 IAC 6-24-2	A	02-326	26 IR 2677	**27 IR 114**

460 IAC 6-25-10	A	02-326	26 IR 2677	**27 IR 114**
460 IAC 6-29-4	A	02-326	26 IR 2678	**27 IR 114**
460 IAC 6-29-9	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-31-1	A	03-123	26 IR 3936	
460 IAC 6-35	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-36	N	03-123	26 IR 3937	
460 IAC 8	N	03-99	26 IR 3392	

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-4.1	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.2	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.7	N	02-298	26 IR 1675	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 116
				*ERR (27 IR 1184)
470 IAC 3-4.8	N	03-232	27 IR 1626	
470 IAC 3-18	N	03-233	27 IR 1627	
470 IAC 6-2-1	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 870
470 IAC 6-2-13	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 871
470 IAC 6-4.1-4	A	03-136	26 IR 3710	*NRA (27 IR 207)
				27 IR 871
470 IAC 10.1-3-4	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-4.1	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-5	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.2	N	03-33	26 IR 2680	*NRA (26 IR 3670)
				27 IR 498

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 6-7-6.1	A	03-150	26 IR 3938	*ARR (27 IR 1185)
	A	03-150	27 IR 1211	
511 IAC 6.1-1-2	A	03-219	27 IR 561	
511 IAC 6.1-5.1-9	A	03-151	26 IR 3939	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	
511 IAC 6.2-2.5	N	03-219	27 IR 563	
511 IAC 6.2-6-4	A	02-264	26 IR 1719	**27 IR 162**
511 IAC 6.2-6-6.1	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-8	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-12	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7-8	A	03-219	27 IR 564	

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

514 IAC	N	03-298	27 IR 1634	

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-3	R	02-314	26 IR 1257	*ARR (26 IR 3346)
				27 IR 505
515 IAC 1-7	N	02-314	26 IR 1254	*ARR (26 IR 3346)
				27 IR 501
515 IAC 4	N	03-135	27 IR 925	
515 IAC 8	N	03-10	26 IR 2437	**27 IR 166**
				*ERR (27 IR 538)
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648)
				27 IR 1169
515 IAC 12	N	03-65	26 IR 3943	

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-5	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-10	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-15	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-18	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-3-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-8-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-10-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-11	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-3	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-4	RA	03-112	26 IR 3754	**27 IR 570**

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

550 IAC 2-2-7	A	03-155	26 IR 3944	*CPH (27 IR 551)
				*CPH (27 IR 1196)
550 IAC 7	N	03-100	26 IR 3710	*CPH (27 IR 1196)

TITLE 610 DEPARTMENT OF LABOR

610 IAC 4-2-1	A	03-36	26 IR 2463	**27 IR 1879**
610 IAC 4-2-11	R	03-36	26 IR 2464	**27 IR 1879**
610 IAC 4-6-11	A	03-37	26 IR 2464	**27 IR 1879**
610 IAC 4-6-13	R	03-253	27 IR 565	
610 IAC 4-6-23	A	03-252	27 IR 564	

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	03-186	27 IR 932	*AROC (27 IR 1652)
655 IAC 1-2.1-2	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-3	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-6.1	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.2	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.3	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.4	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-12	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-14	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-15	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-19	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-19.1	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-20	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-23	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-23.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.2	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.3	N	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-2.1-88	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-1	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-2	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-4	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-5	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-7	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-1	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-4-2	A	03-186	27 IR 940	*AROC (27 IR 1652)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 12-4-11	A	03-278	27 IR 941	
675 IAC 13-1-4	RA	03-48	26 IR 2693	*CPH (27 IR 551)
				27 IR 1299

675 IAC 13-1-5	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-9.5	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-9.6	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-28	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 14-4.2-1	A	03-71	26 IR 3712	
675 IAC 14-4.2-2	A	03-71	26 IR 3712	
675 IAC 14-4.2-3	A	03-71	26 IR 3714	
675 IAC 14-4.2-6	A	03-71	26 IR 3715	
675 IAC 14-4.2-7	A	03-71	26 IR 3719	
675 IAC 14-4.2-9	A	03-71	26 IR 3719	
675 IAC 14-4.2-13.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-15.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-19.5	N	03-71	26 IR 3720	
675 IAC 14-4.2-20.5	A	03-71	26 IR 3720	
675 IAC 14-4.2-21	A	03-71	26 IR 3720	
675 IAC 14-4.2-22	A	03-71	26 IR 3721	
675 IAC 14-4.2-26.5	N	03-71	26 IR 3722	
675 IAC 14-4.2-27.5	A	03-71	26 IR 3722	
675 IAC 14-4.2-29	A	03-71	26 IR 3722	
675 IAC 14-4.2-31	A	03-71	26 IR 3722	
675 IAC 14-4.2-34	A	03-71	26 IR 3723	
675 IAC 14-4.2-37.5	N	03-71	26 IR 3724	
675 IAC 14-4.2-45.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-46.8	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.1	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-52	A	03-71	26 IR 3725	
675 IAC 14-4.2-53	A	03-71	26 IR 3725	
675 IAC 14-4.2-53.7	N	03-71	26 IR 3725	
675 IAC 14-4.2-61	A	03-71	26 IR 3726	
675 IAC 14-4.2-63	A	03-71	26 IR 3726	
675 IAC 14-4.2-69.5	N	03-71	26 IR 3726	
675 IAC 14-4.2-71	A	03-71	26 IR 3726	
675 IAC 14-4.2-73.5	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.6	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.2	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.3	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-82	A	03-71	26 IR 3727	
675 IAC 14-4.2-83	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.2	N	03-71	26 IR 3728	
675 IAC 14-4.2-89.6	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.7	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.8	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.9	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.10	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.11	R	03-71	26 IR 3737	
675 IAC 14-4.2-95	A	03-71	26 IR 3729	
675 IAC 14-4.2-96.2	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.5	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.9	N	03-71	26 IR 3729	
675 IAC 14-4.2-107	A	03-71	26 IR 3729	
675 IAC 14-4.2-112.5	N	03-71	26 IR 3735	
675 IAC 14-4.2-117	A	03-71	26 IR 3736	
675 IAC 14-4.2-171.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-174.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-177.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-189	A	03-71	26 IR 3736	
675 IAC 14-4.2-189.2	N	03-71	26 IR 3736	
675 IAC 14-4.2-191.4	A	03-71	26 IR 3736	
675 IAC 14-4.2-192	R	03-71	26 IR 3737	
675 IAC 17-1.6-12	A	03-71	26 IR 3737	
675 IAC 17-1.6-16	A	03-71	26 IR 3737	
675 IAC 19-3-4	A	03-71	26 IR 3737	

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-21-2	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-21-5	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-21-8	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-50-2	A	03-160	27 IR 271	**27 IR 1568**
760 IAC 1-50-3	A	03-160	27 IR 271	**27 IR 1569**
760 IAC 1-50-4	A	03-160	27 IR 272	**27 IR 1569**
760 IAC 1-50-5	A	03-160	27 IR 272	**27 IR 1569**
760 IAC 1-50-7	A	03-160	27 IR 273	**27 IR 1570**
760 IAC 1-50-13	A	03-160	27 IR 273	**27 IR 1570**
760 IAC 1-50-13.5	A	03-160	27 IR 273	**27 IR 1571**
760 IAC 1-57-1	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-2	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-3	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-4	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-5	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-6	A	03-7	26 IR 3400	**27 IR 507**
760 IAC 1-57-7	R	03-7	26 IR 3408	**27 IR 515**
760 IAC 1-57-8	A	03-7	26 IR 3401	**27 IR 508** *ERR (27 IR 1575)
760 IAC 1-57-9	A	03-7	26 IR 3405	**27 IR 512**
760 IAC 1-57-10	A	03-7	26 IR 3407	**27 IR 514** *ERR (27 IR 1575)
760 IAC 1-60-3	A	03-258	27 IR 2070	
760 IAC 1-60-5	A	03-258	27 IR 2072	
760 IAC 1-69	N	03-8	26 IR 3945	**27 IR 872**

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	03-20	26 IR 3136	**27 IR 180**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-1-11	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 515**
820 IAC 6-1-3	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**
820 IAC 6-3	N	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 1-1-3	A	03-73	26 IR 3408	*CPH (26 IR 3904)
828 IAC 1-1-6	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-7	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-12	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-3	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-6	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-7	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-12	A	03-73	26 IR 3410	*CPH (26 IR 3904)

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-2-1	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-2	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-5	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-5	RA	03-55	26 IR 3755	**27 IR 946**

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

836 IAC 1-1-1	A	03-188	27 IR 1212	
836 IAC 1-1-2	A	03-188	27 IR 1215	
836 IAC 1-1-3	A	03-188	27 IR 1216	
836 IAC 1-1-4	N	03-188	27 IR 1217	
836 IAC 1-1-5	N	03-188	27 IR 1217	
836 IAC 1-1-6	N	03-188	27 IR 1219	
836 IAC 1-1-7	N	03-188	27 IR 1220	
836 IAC 1-1-8	N	03-188	27 IR 1220	

836 IAC 1-2-1	A	03-188	27 IR 1221	
836 IAC 1-2-2	A	03-188	27 IR 1222	
836 IAC 1-2-3	A	03-188	27 IR 1222	
836 IAC 1-2-5	N	03-188	27 IR 1225	
836 IAC 1-3-1	A	03-188	27 IR 1225	
836 IAC 1-3-2	A	03-188	27 IR 1226	
836 IAC 1-3-3	A	03-188	27 IR 1226	
836 IAC 1-3-5	A	03-188	27 IR 1228	
836 IAC 1-3-6	A	03-188	27 IR 1229	
836 IAC 1-4-1	A	03-188	27 IR 1230	
836 IAC 1-4-2	A	03-188	27 IR 1230	
836 IAC 1-11-1	A	03-188	27 IR 1231	
836 IAC 1-11-2	A	03-188	27 IR 1231	
836 IAC 1-11-3	A	03-188	27 IR 1232	
836 IAC 1-11-4	A	03-188	27 IR 1234	
836 IAC 1-12	N	03-188	27 IR 1235	
836 IAC 2-1-1	A	03-188	27 IR 1239	
836 IAC 2-2-1	A	03-188	27 IR 1240	
836 IAC 2-2-2	A	03-188	27 IR 1243	
836 IAC 2-2-3	A	03-188	27 IR 1244	
836 IAC 2-2-4	N	03-188	27 IR 1245	
836 IAC 2-4.1-1	A	03-188	27 IR 1245	
836 IAC 2-4.1-2	A	03-188	27 IR 1246	
836 IAC 2-7.1	R	03-188	27 IR 1283	
836 IAC 2-7.2-1	A	03-188	27 IR 1247	
836 IAC 2-7.2-2	A	03-188	27 IR 1250	
836 IAC 2-7.2-3	A	03-188	27 IR 1250	
836 IAC 2-7.2-4	N	03-188	27 IR 1252	
836 IAC 2-11-1	R	03-188	27 IR 1283	
836 IAC 2-14-1	A	03-188	27 IR 1252	
836 IAC 2-14-2	A	03-188	27 IR 1253	
836 IAC 2-14-3	A	03-188	27 IR 1253	
836 IAC 2-14-5	A	03-188	27 IR 1255	
836 IAC 3-1-1	A	03-188	27 IR 1256	
836 IAC 3-2-1	A	03-188	27 IR 1256	
836 IAC 3-2-2	A	03-188	27 IR 1258	
836 IAC 3-2-3	A	03-188	27 IR 1258	
836 IAC 3-2-4	A	03-188	27 IR 1259	
836 IAC 3-2-5	A	03-188	27 IR 1260	
836 IAC 3-2-6	A	03-188	27 IR 1261	
836 IAC 3-2-7	A	03-188	27 IR 1261	
836 IAC 3-3-1	A	03-188	27 IR 1262	
836 IAC 3-3-2	A	03-188	27 IR 1263	
836 IAC 3-3-3	A	03-188	27 IR 1264	
836 IAC 3-3-4	A	03-188	27 IR 1264	
836 IAC 3-3-5	A	03-188	27 IR 1266	
836 IAC 3-3-6	A	03-188	27 IR 1266	
836 IAC 3-3-7	A	03-188	27 IR 1267	
836 IAC 3-5-1	A	03-188	27 IR 1267	
836 IAC 4-1-1	A	03-188	27 IR 1267	
836 IAC 4-2-1	A	03-188	27 IR 1270	
836 IAC 4-2-2	A	03-188	27 IR 1270	
836 IAC 4-2-3	A	03-188	27 IR 1271	
836 IAC 4-2-4	A	03-188	27 IR 1272	
836 IAC 4-3-2	A	03-188	27 IR 1272	
836 IAC 4-3-3	A	03-188	27 IR 1273	
836 IAC 4-4-1	A	03-188	27 IR 1273	
836 IAC 4-4-2	A	03-188	27 IR 1274	
836 IAC 4-4-3	A	03-188	27 IR 1275	
836 IAC 4-5-2	A	03-188	27 IR 1275	
836 IAC 4-6-1	R	03-188	27 IR 1283	
836 IAC 4-7-1	A	03-188	27 IR 1276	
836 IAC 4-7-2	A	03-188	27 IR 1276	
836 IAC 4-7-3	A	03-188	27 IR 1277	
836 IAC 4-7-3.5	A	03-188	27 IR 1277	
836 IAC 4-7-4	A	03-188	27 IR 1278	
836 IAC 4-7.1-1	A	03-188	27 IR 1278	
836 IAC 4-7.1-2	A	03-188	27 IR 1278	
836 IAC 4-7.1-3	A	03-188	27 IR 1279	
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				*CPH (27 IR 1196)
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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

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