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**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

Proposed Rule
LSA Document #03-312

DIGEST

Amends 329 IAC 3.1-1-7 to incorporate by reference the July 1, 2003, edition of 40 CFR 60, Appendices A-1 through A-8, 40 CFR 146, and 40 CFR 260 through 40 CFR 270 and 40 CFR 273. Amends 329 IAC 3.1-6-2 to add a federal amendment to the used oil management standards published by the U.S. Environmental Protection Agency on July 30, 2003. Amends 329 IAC 3.1-6-3 to clarify that chemical munitions are acute hazardous wastes. Adds 329 IAC 3.1-7.5 to retain procedures for managing rejected hazardous waste loads currently found in IC 13-22-5-12. Amends 329 IAC 3.1-12-2 to correct the definition of "PCB" and to correct references. Amends 329 IAC 3.1-13-2 to clarify a reference to hazardous waste permits. Amends 329 IAC 13-3-1, adds 329 IAC 13-3-4, and amends 329 IAC 13-9-5 to adopt federal changes to the recycled used oil management standards. Incorporates by reference the July 1, 2003, edition of 40 CFR 60, Appendices A-1 through A-8, 40 CFR 146, and 40 CFR 260 through 40 CFR 270 and 40 CFR 273. Partially effective 30 days after filing with the secretary of state and partially effective July 1, 2005.

HISTORY

First Notice of Comment Period: January 1, 2004, Indiana Register (27 IR 1387).
Continuation of First Notice of Comment Period: March 1, 2004, Indiana Register (27 IR 2104).
Second Notice of Comment Period and Notice of First Public hearing: May 1, 2004, Indiana Register (27 IR 2592).
Change in Notice of First Public Hearing: June 1, 2004, Indiana Register, 27 IR 2760.
Change in Notice of First Public Hearing: July 1, 2004, Indiana Register, 27 IR 3095.
Date of First Hearing: July 20, 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, until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on May 1, 2004, at 27 IR 2592, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from May 1, 2004, through May 31, 2004, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On July 20, 2004, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to rules at 329 IAC 3.1. No comments were made at the first public hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

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

329 IAC 3.1-1-7 **329 IAC 3.1-13-2**
329 IAC 3.1-6-2 **329 IAC 13-3-1**
329 IAC 3.1-6-3 **329 IAC 13-3-4**
329 IAC 3.1-7.5 **329 IAC 13-9-5**
329 IAC 3.1-12-2

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 27 IR 1874, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4

Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, ~~2002~~: **2003**.

(b) 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.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, ~~(1995)~~: **revised as of July 1, 2003.**
- (2) 40 CFR 60, ~~Appendix A (1995)~~: **Appendix A-1, revised as of July 1, 2003.**
- (3) **40 CFR 60, Appendix A-2, revised as of July 1, 2003.**
- (4) **40 CFR 60, Appendix A-3, revised as of July 1, 2003.**
- (5) **40 CFR 60, Appendix A-4, revised as of July 1, 2003.**
- (6) **40 CFR 60, Appendix A-5, revised as of July 1, 2003.**
- (7) **40 CFR 60, Appendix A-6, revised as of July 1, 2003.**
- (8) **40 CFR 60, Appendix A-7, revised as of July 1, 2003.**
- (9) **40 CFR 60, Appendix A-8, revised as of July 1, 2003.**

~~(b)~~ (d) 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)~~ (e) 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)~~ (f) 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)~~ (g) 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 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

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

Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:
(1) This rule identifies only some of the materials which are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:

(A) in the case of IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) in the case of IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the “administrator” in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

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

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

(7) Delete 40 CFR 261, Appendix IX.

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

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

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

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

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

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

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

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

(16) In 40 CFR 261.5(j), delete “if it is destined to be burned for energy recovery” in two (2) places.

(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries	3325
Aluminum foundries	3365
Copper foundries	3366

Nonferrous foundries 3369
(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432)

SECTION 3. 329 IAC 3.1-6-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

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

Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 3. (a) In addition to the ~~list lists~~ of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are ~~added to the list of acute hazardous waste:~~ **wastes:**

- (1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).
- (2) GB (Isopropyl methyl phosphonoflouridate).
- (3) H, HD (Bis(2-chloroethyl) sulfide).
- (4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).
- (5) L (Dichloro(2-chlorovinyl)arsine).
- (6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

The above listed chemical munitions have the Indiana hazardous waste number I001 **and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection (b).**

(b) The commissioner may establish alternative requirements for wastes listed in this section and for wastes derived from those listed wastes. (Solid Waste Management Board; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 4. 329 IAC 3.1-7.5 IS ADDED TO READ AS FOLLOWS:

Rule 7.5. Rejection of Hazardous Waste

329 IAC 3.1-7.5-1 Rejection prior to signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-1; 40 CFR 262

Sec. 1. A hazardous waste facility owner or operator may reject all of a hazardous waste shipment for any reason before signing the manifest. (Solid Waste Management Board; 329 IAC 3.1-7.5-1)

329 IAC 3.1-7.5-2 Rejection after signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-2; 40 CFR 262

Sec. 2. After the manifest is signed, a hazardous waste facility owner or operator may reject all or part of a hazardous waste shipment that:

- (1) does not conform to the terms of the agreement under which the hazardous waste facility agrees to manage the hazardous waste;**
- (2) does not conform to the requirements of the hazardous waste facility's permit;**
- (3) would require a deviation from the hazardous waste facility's standard operating procedures; or**
- (4) cannot, with reasonable efforts, be removed from the vehicle or the container in which the hazardous waste was transported.**

(Solid Waste Management Board; 329 IAC 3.1-7.5-2)

329 IAC 3.1-7.5-3 Rejection after signing manifest; compliance by facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-3; 40 CFR 262

Sec. 3. If a hazardous waste facility owner or operator rejects under section 2 of this rule all or part of a hazardous waste shipment, the hazardous waste facility shall comply with the requirements of this rule. (Solid Waste Management Board; 329 IAC 3.1-7.5-3)

329 IAC 3.1-7.5-4 Rejection after signing manifest; facility not generator; facility not liable

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-4; IC 13-25-4; 40 CFR 262

Sec. 4. A hazardous waste facility that rejects all or part of a hazardous waste shipment under section 2 of this rule is not:

(1) considered a generator of the rejected hazardous waste; and

(2) liable for any rejected part of the hazardous waste shipment under IC 13-25-4.

(Solid Waste Management Board; 329 IAC 3.1-7.5-4)

329 IAC 3.1-7.5-5 Rejection after signing manifest; facility owner or operator duty to contact generator and secure waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-5; 40 CFR 262

Sec. 5. If a hazardous waste facility owner or operator rejects all or part of a shipment of hazardous waste after the owner or operator has signed the manifest, the hazardous waste facility owner or operator shall contact the generator, who shall direct the owner or operator to:

(1) return the rejected shipment to the generator; or

(2) transport the rejected shipment to an alternate hazardous waste facility selected by the generator.

(Solid Waste Management Board; 329 IAC 3.1-7.5-5)

329 IAC 3.1-7.5-6 Rejected waste; manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-6; 40 CFR 262

Sec. 6. (a) If the rejected load is to be returned to a generator, the generator shall complete a new manifest form in accordance with 40 CFR 262, incorporated by reference in 329 IAC 3.1-7-1, except the following:

(1) Line out the word “generator” in Box 3 of the manifest and insert the words “rejecting facility”.

(2) Line out the words “designated facility” in Box 9 of the manifest and insert the word “generator”.

(3) In Box 15 of the manifest, write:

(A) the words “REJECTED LOAD” in large block print; and

(B) the manifest document number of the original manifest for the rejected load.

(b) The rejected load manifest must accompany the shipment back to the generator. The generator retains all responsibility for transportation of the rejected waste. (Solid Waste Management Board; 329 IAC 3.1-7.5-6)

329 IAC 3.1-7.5-7 Rejected waste; duties of generator and rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-7; 40 CFR 262

Sec. 7. (a) When the rejected waste and the new manifest created in accordance with section 6 of this rule are received by the generator, the generator shall do the following:

(1) Note any discrepancies in Box 19 of the new manifest.

(2) Line out the words “Facility Owner or Operator” in Box 20 of the new manifest and insert the words “Receiving generator”.

- (3) Sign Box 20 of the new manifest.
- (4) Give a copy of the new manifest to the transporter.
- (5) Mail a copy of the new manifest to the rejecting facility not more than five (5) days after receipt of the shipment and the new manifest.

(b) The receiving generator and rejecting facility shall retain copies of the new manifest from the rejected load for not less than three (3) years after the date of receipt. *(Solid Waste Management Board; 329 IAC 3.1-7.5-7)*

329 IAC 3.1-7.5-8 Rejecting facility; nonreceipt of manifest within time limit

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-8; 40 CFR 262

Sec. 8. If the rejecting facility does not receive a copy of the new manifest with the handwritten signature of the generator in Box 20 in not more than thirty-five (35) days from the date the rejected waste was accepted for transport back to the generator, the rejecting facility shall comply with the exception reporting requirements in 40 CFR 264.72, incorporated by reference in 329 IAC 3.1-9-1 or 40 CFR 265.72, incorporated by reference in 329 IAC 3.1-10-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-8)*

329 IAC 3.1-7.5-9 Generator; temporary retention of rejected waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-9; 40 CFR 262

Sec. 9. The generator may retain the hazardous waste at the location of receipt for not more than ninety (90) days following receipt of the rejected load before shipment to a permitted facility. The generator shall manage the waste during the retention period in accordance with 40 CFR 262.34, incorporated by reference in 329 IAC 3.1-9-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-9)*

329 IAC 3.1-7.5-10 Rejected waste; transfer to alternate facility; generator to forward manifest to rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-10; 40 CFR 262

Sec. 10. If the rejected load is to be shipped to an alternate hazardous waste management facility, the generator shall complete the manifest form identifying the generator as the generator and specifying the alternate designated facility. The generator shall forward the manifest to the rejecting facility to accompany the shipment to the alternate facility. *(Solid Waste Management Board; 329 IAC 3.1-7.5-10)*

329 IAC 3.1-7.5-11 Mixture of waste from multiple generators by transporter; responsibilities

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12

Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-11; 40 CFR 262

Sec. 11. If hazardous waste from more than one (1) generator is mixed together by the transporter before delivery to the hazardous waste facility, the transporter shall assume all responsibility for proper disposition of the rejected waste, including the responsibility to:

- (1) designate an alternate hazardous waste facility; and
- (2) assure delivery to the designated alternate hazardous waste facility.

(Solid Waste Management Board; 329 IAC 3.1-7.5-11)

SECTION 5. 329 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions

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

Affected: IC 13-11-2-155; IC 13-22-2; 40 CFR 268

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

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

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

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

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

(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

(A) 40 CFR 268.5.

(B) 40 CFR 268.6.

(C) 40 CFR 268.42(b).

(D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C **or Subpart D**, as incorporated in this rule.

(5) ~~In~~ **Delete** 40 CFR 268.2(e) ~~delete “40 CFR 761.3” and insert “329 IAC 4.1”.~~ **and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.**

~~(6) Delete 40 CFR 268.8.~~

~~(7)~~ **(6)** Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator’s or treater’s files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in ~~40 CFR 268.7(b)(5)(i)~~. **40 CFR 268.7(b)(4)**.

The notification and certification that is placed in the generator’s or treater’s files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

~~(8)~~ **(7)** Delete 40 CFR 268, Subpart B.

~~(9)~~ **(8)** In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.

~~(10)~~ **(9)** Delete 40 CFR 268.33.

(Solid Waste Management Board; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046)

SECTION 6. 329 IAC 3.1-13-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-13-2 Exceptions and additions; permit program

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

Affected: IC 4-21.5; IC 13-15; IC 13-22-2; IC 13-22-3; IC 13-30; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:

(1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.

(2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for denying, issuing, modifying, revoking and reissuing, and terminating all final state permits other than “emergency permits” and “permits by rule”.

(3) Delete 40 CFR 270.1(b).

(4) Delete 40 CFR 270.3.

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

- (6) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.
- (7) Delete 40 CFR 270.14(b)(18).
- (8) Delete 40 CFR 270.14(b)(20).
- (9) In 40 CFR 270.32(a), delete references to “alternate schedules of compliance” and “considerations under federal law”. These references in the federal permit requirements are only applicable to federally issued permits.
- (10) In 40 CFR 270.32(b)(2), delete “under section 3005 of this act” and substitute “this article”.**
- ~~(10)~~ **(11)** Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following:
If new requirements become effective, including any interim final regulations, during the permitting process which are:
- (A) prior to modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and
 - (B) of sufficient magnitude to make additional proceeding desirable, the commissioner shall at her discretion, reopen the comment period.
- ~~(11)~~ **(12)** Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.
- ~~(12)~~ **(13)** Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.
- ~~(13)~~ **(14)** Delete 40 CFR 270.64.
- ~~(14)~~ **(15)** In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

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

SECTION 7. 329 IAC 13-3-1, AS AMENDED AT 27 IR 3978, SECTION 39, IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

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

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261 Subpart C, revised as of July 1, 2002.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261 Subpart D, revised as of July 1, 2002, are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D, revised as of July 1, 2002. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from U.S. Environmental Protection Agency Publication SW-846, as defined in 329 IAC 10-2-197.1, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII, revised as of July 1, 2002. U.S. Environmental Protection Agency SW-846 is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does not apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does not apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C, revised as of July 1,

2002, are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, revised as of July 1, 2002, are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article; and

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), revised as of July 1, 2002.

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

~~(i) In addition to the requirements of this article, marketers and burners of used oil who market~~ Used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are less than fifty (50) parts per million PCB is subject to the requirements found at ~~40 CFR 761.20(e), revised as of June 24, 1999:~~ of this article unless, because of dilution, it is regulated under 329 IAC 4.1 as a used oil containing PCB at fifty (50) parts per million or greater. Used oil containing PCB subject to the requirements of this article may also be subject to the prohibitions and requirements found in 329 IAC 4.1.

(j) Used oil containing PCB at concentrations of fifty (50) parts per million or greater is not subject to the requirements of this article, but is subject to regulation under 329 IAC 4.1. No person may avoid these provisions by diluting used oil containing PCB, unless otherwise specifically provided for in this article or in 329 IAC 4.1.

(k) The use of waste oil that contains equal to or greater than two (2) parts per million PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

(l) In addition to any applicable requirements under 329 IAC 13-8 and 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing equal to or greater than two (2) parts per million PCB must comply with section 4 of this rule.

~~(m) 40 CFR 261 and 40 CFR 761 are available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. (Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3978)~~

SECTION 8. 329 IAC 13-3-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 13-3-4 Marketing used oil containing any quantifiable level of PCB

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

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 4. (a) In addition to any applicable requirements in 329 IAC 13-8 through 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing

greater than or equal to two (2) parts per million PCB are subject to the requirements of this section.

(b) Used oil containing greater than or equal to two (2) parts per million PCB may be marketed only to:

(1) Qualified incinerators as defined in 40 CFR 761.3, incorporated by reference in 329 IAC 4.1-2-1.

(2) Marketers who market off-specification used oil for energy recovery only to other marketers who have complied with 329 IAC 13-9-4.

(3) Burners identified in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2). Only burners in the automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 329 IAC 13-4-4 are met. The commissioner may grant a variance for a boiler that does not meet the criteria in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2) after considering the criteria listed in 40 CFR 260.32(a) through 40 CFR 260.32(f), incorporated by reference in 329 IAC 3.1-5-4. The applicant must address the relevant criteria contained in 40 CFR 260.32(a) through 40 CFR 260.32(f) in an application to the commissioner.

(c) Used oil to be burned for energy recovery is presumed to contain greater than or equal to two (2) parts per million PCB unless the marketer obtains test analyses or other information that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB.

(1) The person who first claims that a used oil fuel does not contain greater than or equal to two (2) parts per million PCB must obtain analyses or other information to support that claim.

(2) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in § 761.60(g)(2), incorporated by reference in 329 IAC 4.1-4-1. However, for purposes of this part, if any PCBs at a concentration of fifty (50) parts per million or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of fifty (50) parts per million or greater for purposes of complying with the disposal requirements of this part.

(3) Other information documenting that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil does not contain greater than or equal to two (2) parts per million PCB.

(d) Persons subject to this section shall comply with the following restrictions on burning:

(1) Used oil containing greater than or equal to two (2) parts per million PCB may be burned for energy recovery only in the combustion facilities identified in subsection (b) when such facilities are operating at normal operating temperatures. Used oil containing greater than or equal to two (2) parts per million PCB must not be burned during either startup or shutdown operations. Owners and operators of such facilities are burners of used oil fuels.

(2) Before a burner accepts from a marketer the first shipment of used oil fuel containing greater than or equal to two (2) parts per million PCB, the burner must provide the marketer a one-time written and signed notice certifying that:

(A) The burner has complied with any notification requirements applicable to qualified incinerators as defined in 40 CFR 761.3, incorporated in 329 IAC 4.1-2-1, or to burners regulated under 329 IAC 13-8.

(B) The burner will burn the used oil only in a combustion facility identified in subsection (b) and identify the class of burner he qualifies.

(e) The following record keeping requirements are in addition to the record keeping requirements for marketers found in 329 IAC 13-9-3(b), 329 IAC 13-9-5, and 329 IAC 13-9-6, and for burners found in 329 IAC 13-8-6 and 329 IAC 13-8-7:

(1) Marketers who first claim that the used oil fuel contains greater than or equal to two (2) parts per million PCB must:

(A) include among the records required by 329 IAC 13-9-3(b) and 329 IAC 13-9-5(b) through 329 IAC 13-9-5(c), copies of the analysis or other information documenting his claim; and

(B) include among the records required by 329 IAC 13-9-5(a), 329 IAC 13-9-5(c), and 329 IAC 13-9-6, a copy of each certification notice received or prepared relating to transactions involving used oil containing PCB.

(2) Burners must include among the records required by 329 IAC 13-8-6 and 329 IAC 13-8-7, a copy of each

certification notice required by subsection (d)(2) that the burner sends to a marketer.
(Solid Waste Management Board; 329 IAC 13-3-4)

SECTION 9. 329 IAC 13-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-9-5 Tracking

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

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner.
- (2) The name and address of the burner who will receive the used oil.
- (3) The EPA identification number of the transporter who delivers the used oil to the burner.
- (4) The EPA identification number of the burner.
- (5) The quantity of used oil shipped.
- (6) The date of shipment.

(b) A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under 329 IAC 13-3-2 must keep a record of each shipment of used oil to ~~an on-specification~~ **the facility to which it delivers the used oil.** ~~burner.~~ Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment.
- (2) The quantity of used oil fuel delivered.
- (3) The date of shipment or delivery.
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under section 3(a) of this rule.

(c) The records described in this section must be maintained for at least three (3) years. (Solid Waste Management Board; 329 IAC 13-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 10. **SECTION 4 of this document takes effect July 1, 2005.**

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 October 19, 2004 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed new rules and amendments to rules at 329 IAC 3.1.

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 to 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 Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

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

Attn: 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 Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality