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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7, TENTATIVE RECOMMENDATION FOR RULEMAKING, AND SECOND NOTICE OF COMMENT PERIOD #04-318(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING EXCLUSION OF A HAZARDOUS WASTE FROM REGULATION UNDER 329 IAC 3.1 (DELISTING)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for an amendment to a rule excluding a hazardous waste from regulation under 329 IAC 3.1-5-2 (delisting). This delisting was granted in 2001 to Heritage Environmental Services LLC for treated electric arc furnace dust produced at Nucor Steel, Division of Nucor Corporation, located in Crawfordsville, Indiana. The purpose of this notice is to publish the commissioner's tentative recommendation for rulemaking to increase the amount of hazardous waste excluded under this delisting and to seek public comment on the recommendation and the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-6-6.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-22-2.

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 forgo 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."

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On November 1, 2001 (25 IR 372), we published a final rule at 329 IAC 3.1-6-6 delisting electric arc furnace dust (EAFD) generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant. This EAFD is treated to be nonhazardous and is subject to a rigorous quality assurance program to ensure that the delisting levels required in the rule are maintained. This delisting rule is currently limited to thirty thousand (30,000) cubic yards of treated EAFD annually.

On November 12, 2004, Heritage requested that the EAFD quantity limit be raised to sixty thousand (60,000) cubic yards annually to accommodate increased steel production at Nucor's Crawfordsville plant. This rule proposes to increase that quantity limit. If this increase is approved, Heritage would have to maintain the required quality assurance program for all delisted EAFD.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The Resource Conservation and Recovery Act (RCRA)(42 U.S.C. 6901 et seq.) requires states that wish to administer their

hazardous waste management programs in lieu of the federal hazardous waste program to maintain their programs at least as stringent as the federal program. Indiana is authorized under 40 CFR 271 to administer the hazardous waste management program in lieu of the federal hazardous waste program administered by the U.S. Environmental Protection Agency (EPA). Authorized states are required to adopt changes to the federal program that are more stringent than the existing federal program. However, states are not required to adopt a hazardous waste delisting program because delisting a waste results in a program that is less stringent than the existing federal program.

P.L.45-1997 and P.L.128-1997 required IDEM to adopt a hazardous waste delisting program. That delisting program was established in 1998 and authorized by EPA in 2001.

Because the delisting program is an optional program, the action proposed in this rulemaking is not imposed under federal law. As required by IC 13-14-9-4, the following element of the draft rule imposes a requirement that is not imposed under federal law:

Increase the quantity of treated electric arc furnace dust that may be excluded from regulation as hazardous waste under 329 IAC 3.1-6-6 from thirty thousand (30,000) cubic yards to sixty thousand (60,000) cubic yards annually.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Nucor is increasing its steel producing capacity, and the quantity limit in the current delisting does not cover all EAFD produced.

Examples in which federal law is inadequate: Federal law is not inadequate. This delisting authority rests solely in Indiana rules, because Indiana's delisting program operates in lieu of the federal delisting program.

Estimated fiscal impact and expected benefits: While we expect Heritage and Nucor to experience some savings by disposing of the additional delisted EAFD in a nonmunicipal solid waste landfill rather than a hazardous waste disposal facility (both owned by Heritage), the actual costs of disposal are proprietary. The actual savings, if any, cannot be quantified at this time.

Availability for public inspection of all materials relied on by IDEM in the development of this element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

Potential Fiscal Impact

Because the actual costs of disposal of this additional quantity of treated EAFD in Heritage's nonmunicipal solid waste landfill and hazardous waste disposal facility are proprietary, the actual savings, if any, cannot be quantified at this time.

Effect on Industries Listed in Public Law 231-2003, SECTION 6

In accordance with P.L.231-2003, SECTION 6, this rule cannot require a person who engages in any of the following industries (identified by Standard Industry Classification Code (SIC Code) to comply with a standard of conduct that exceeds the standard of conduct established in the related federal regulation or regulatory policy until July 1, 2005:

Blast furnaces and steel mills (SIC 3312);
Gray and ductile iron foundries (SIC 3321);
Malleable iron foundries (SIC 3322);
Steel investment foundries (SIC 3324);
Steel foundries (SIC 3325);
Aluminum foundries (SIC 3365);
Copper foundries (SIC 3366); and
Nonferrous foundries (SIC 3369).

However, while the provision proposed to be adopted in this rule is not imposed under federal law, it does not exceed the standard of care established in the related federal regulation. As a result, P.L.231-2003, SECTION 6 does not apply to this rulemaking.

Public Participation and Workgroup Information

We do not intend to form a workgroup for this rulemaking at this time.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking to increase the amount of a waste delisted under 329 IAC 3.1-6-6. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) Based on the department's analysis of the request described above, I have determined that the increased quantity of waste to be delisted under this rule will continue to meet the criteria in 40 CFR 260.22 for delisting when treated in accordance with the treatment process described in 329 IAC 3.1-6-6. At this time, I recommend that the amount of waste excluded from regulation under 329 IAC 3.1-6-6 be increased to sixty thousand (60,000) cubic yards annually. This recommendation may be modified or reversed based on the public comments received.

(2) 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.

(3) The draft rule is 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:

#04-318(SWMB)[Heritage EAFD Delisting]
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 (317) 232-3403, 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 February 1, 2005.

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

DRAFT RULE

SECTION 1. 329 IAC 3.1-6-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

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

Affected: IC 13-22

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) Delisting levels for the waste excluded by this section are as follows:

(A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts

Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L
Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L

Zinc

280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ± 0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those described in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report must include the results of each month's analysis required by subdivision (2) for the previous calendar year.

(5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the ground water monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

(A) Category B slag debris.

(B) Foundry sand.

(C) Petroleum contaminated soils.

(D) Fly ash.

(E) Conditioned fly ash.

(F) Coal ash.

(G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as

the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the ground water higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Ground Water

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with ten (10) days after first possessing or being made aware of that data.

(14) No more than ~~thirty six~~ **sixty** thousand (~~30,000~~) (60,000) cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on February 15, 2005, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed amendments to rules at 329 IAC 3.1-6-6.

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 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 or (317) 232-6565 (TDD). 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