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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

#05-219(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REGULATION OF WASTES CONTAINING PCBs AT 329 IAC 4.1

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 4.1 regulating wastes containing polychlorinated biphenyls (PCBs) concerning:

- clarifying the specific versions of secondary incorporation by reference materials to eliminate possible ambiguity over the specific versions of secondary incorporations (referenced in 40 CFR 761) to be used to comply with the article;
- updating addresses for mailing notices, viewing and copying documents, and ordering copies of regulations;
- removing an outdated restriction on use of the Uniform Hazardous Waste Manifest;
- removing references to a repealed rule;
- correcting a typographical error in 329 IAC 4.1-13-1 that causes confusion about how wastes that contain PCBs at a concentration of less than fifty (50) parts per million resulting from a source that had a concentration less than fifty (50) parts per million PCBs are regulated;
- making other appropriate changes recommended in public comments; and
- readopting 329 IAC 4.1 in accordance with IC 13-14-9.5.

IDEM seeks comment on the affected citations listed and any other provisions of 329 IAC 4.1 or other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 4.1.

AUTHORITY: IC 13-20-15-1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IDEM is proposing to make the following specific changes:

- **329 IAC 4.1-1-6:** Clarify the specific versions of secondary incorporation by reference materials to eliminate possible ambiguity over the specific versions of secondary incorporations to be used to comply with the article. This action was requested by the Attorney General as a condition of approving the original PCB rule in 2000.
- **329 IAC 4.1-2-1; 329 IAC 4.1-4-1; 329 IAC 4.1-5-1; 329 IAC 4.1-6-1; 329 IAC 4.1-11-1:** Correct the viewing/copying location and the address for the Superintendent of Documents.
- **329 IAC 4.1-6-2:** Remove subdivision (5) that is no longer required following P.L.143-2000 and repeal of 329 IAC 3.1-7-7 that established the Indiana Hazardous Waste Manifest. We do not prohibit use of EPA Form 8700-22 to manifest PCBs.
- **329 IAC 4.1-7-5; 329 IAC 4.1-8-5; 329 IAC 4.1-9-5; 329 IAC 4.1-10-1:** Correct the Office of Land Quality (OLQ) address.
- **329 IAC 4.1-13-1:** Remove the reference to repealed rule 329 IAC 10-8.1 in subsection (a). Correct a typographical error in subsection (d) that causes confusion about how wastes that contain PCBs at a concentration of less than 50 ppm resulting from a source that had a concentration less than 50 ppm PCBs are regulated. Remove subdivision (f)(7) that refers to 329 IAC 10-8.1.

Alternatives to be Considered Within the Rulemaking

We are considering the following alternatives in this rulemaking:

Alternative 1. Clarify the specific versions of secondary incorporation references in 329 IAC 4.1-1-6 or in a new section.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of federal standards and industry consensus standards.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This alternative is not imposed under federal law, however, it incorporates by reference the federal PCB regulations in 40 CFR 761.
- *If this alternative is a federal requirement, is it different from federal law?* This alternative incorporates by reference the federal

PCB regulations in 40 CFR 761.

- *If it is different, describe the differences.* Because section 18 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2617) generally preempts state regulation of PCB manufacturing and distribution, this incorporation is limited to the PCB disposal requirements in 40 CFR 761, Subparts D, G, K, and M through T, as well as limited requirements from 40 CFR 264, Subpart D.

Alternative 2. Correct the addresses for mailing notifications, viewing and copying documents, and ordering regulations throughout Article 4.1.

- *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 this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

Alternative 3. Remove 329 IAC 4.1-6-2(5) that prohibits use of the Indiana hazardous waste manifest for manifesting PCB shipments.

- *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 comparable federal standard is 40 CFR 761.207(b).
- *If this alternative is a federal requirement, is it different from federal law?* We are changing this requirement to be consistent with the federal requirement.
- *If it is different, describe the differences.* There are no differences.

Alternative 4. Amend 329 IAC 4.1-13-1 to remove references to 320 IAC 10-8.1, and correct a typographical error.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* Requires persons who dispose of wastes containing PCBs in municipal or non-municipal solid waste landfills to follow the federal PCB regulations.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No. However, regardless of the existence of a state PCB rule, persons disposing of wastes containing PCBs are required to follow the federal PCB regulations.
- *If this alternative is a federal requirement, is it different from federal law?* Rule 13 adds additional requirements for disposal of wastes containing PCBs in municipal or nonmunicipal solid waste landfills.
- *If it is different, describe the differences.* Rule 13 adds the following requirements for certain wastes containing PCBs when they are disposed of in a municipal or nonmunicipal solid waste landfill:
 - Obtain written authorization from the commissioner prior to disposal of any quantity of the waste.
 - Comply with any written conditions in the commissioner's authorization.
 - Dispose of nonleaking fluorescent light ballasts only in a municipal solid waste landfill that meets the design requirements of 329 IAC 10-17 (commonly referred to as a "Subtitle D" landfill with a composite liner) and follow the additional disposal requirements in 329 IAC 4.1-13-1(f).

Alternative 5. Readopt 329 IAC 4.1 under IC 13-14-9.5. IDEM proposes to readopt this article in anticipation of its expiration as provided for in IC 13-14-9.5-3. This article will expire on January 1, 2007. Beginning the readoption process now will ensure that it is completed by the expiration date. IDEM intends to readopt 329 IAC 4.1 under the full notice and comment provisions of IC 13-14-9 and IC 4-22-2.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of federal standards and industry consensus standards.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This alternative is not imposed under federal law, however, it incorporates by reference the federal PCB regulations in 40 CFR 761.
- *If this alternative is a federal requirement, is it different from federal law?* This alternative incorporates by reference the federal PCB regulations in 40 CFR 761.
- *If it is different, describe the differences.* Because section 18 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2617) generally preempts state regulation of PCB manufacturing and distribution, this incorporation is limited to the PCB disposal requirements in 40 CFR 761, Subparts D, G, K, and M through T, as well as limited requirements from 40 CFR 264, Subpart D.

Alternative 6. Do not adopt one (1) or more of the preceding alternatives.

- *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 this alternative is a federal requirement, is it different from federal law?* Not applicable.
- *If it is different, describe the differences.* Not applicable.

Additional Alternatives

This notice specifically solicits comment on the alternatives listed above and any other alternatives that would accomplish the purpose of this rule. Based on the comments received on this notice, additional alternatives may be considered.

Applicable Federal Law

Section 18 of TSCA (15 U.S.C. §2617) generally preempts state regulation of PCBs. However, that section does permit states to regulate disposal of PCBs as long as the state's regulations are at least as stringent as the corresponding federal regulations in 40 CFR 761.

Potential Fiscal Impact

Alternatives 1 through 5 are not imposed under federal law and may potentially have very limited fiscal impact on regulated entities affected by this rule. Since IDEM is not proposing any new requirements at this time, we do not expect that this rule will result in any new costs. Some limited cost savings may result from streamlining and improvement of the rule but it is not possible to quantify those potential savings, if any, at this time.

Applicable Federal Law

Section 6(e) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605) provides for regulation of PCBs. Section 18 of TSCA preempts state regulation of PCBs EPA regulates PCBs except for regulation of disposal of PCBs that is not more or less stringent than the federal regulations at 40 CFR 761. 329 IAC 4.1 incorporates by reference the portions of 40 CFR 761 that regulate disposal of PCBs.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
317-232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue, IGCN 1301
Indianapolis, IN 46204-2251
317-234-3386
elevenha@idem.IN.gov

Public Participation and Workgroup Information

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

Marjorie Samuel (#05-219; Regulation of Wastes Containing PCBs)
Indiana Department of Environmental Management
Office of Land Quality
100 N. Senate Ave., Room 1101
Indianapolis, Indiana 46204-2241

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

The formation of a workgroup, if it occurs, will be announced on IDEM's rulemaking website: <http://www.in.gov/idem/rules/>.

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

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

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:

Marjorie Samuel (#05-219; Regulation of Wastes Containing PCBs)
Indiana Department of Environmental Management
Office of Land Quality
100 N. Senate Ave., Room 1101
Indianapolis, Indiana 46204-2241

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 October 3, 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 call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at <http://www.in.gov/idem/rules/>.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality