

Document: IC 13-14-9 Notice, **Register Page Number:** 29 IR 223

Source: October 1, 2005, Indiana Register, Volume 29, Number 1

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TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-66(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING THE 2005 UPDATE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM AT 329 IAC 3.1 AND 329 IAC 13

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules and amendments to rules in 329 IAC 3.1 and 329 IAC 13 concerning:

- Incorporating by reference the July 1, 2005, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273, and the changes to the federal hazardous waste program published on August 5, 2005 (70 FR 45508), including the following:
 - National Environmental Performance Track System.
 - National Emission Standards for Hazardous Air Pollutants (NESHAP): Coating of Automobiles and Light-Duty Trucks.
 - Hazardous Waste-Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing.
 - Modification of the Hazardous Waste Manifest System.
 - Methods Innovation Rule and SW-846 Final Update IIIB.
 - Mercury Containing Equipment.
- Changes to the listing of chemical munitions as acute hazardous waste in 329 IAC 3.1-6-3 to more accurately describe the actual requirements generators of those wastes must follow.

By this notice, IDEM is soliciting public comment on the draft rule language. IDEM is requesting comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: May 1, 2005, Indiana Register (28 IR 2470).

CITATIONS AFFECTED: 329 IAC 3.1-1-7; 329 IAC 3.1-1-9; 329 IAC 3.1-1-14.1; 329 IAC 3.1-6-3; 329 IAC 3.1-7-2; 329 IAC 3.1-7.5; 329 IAC 13-3-1; 329 IAC 13-6-5; 329 IAC 13-7-4; 329 IAC 13-8-4.

AUTHORITY: IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2; 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

Sections 3006 and 3009 of Resource Conservation and Recovery Act, as amended (RCRA) (42 U.S.C. 6926 and 42 U.S.C. 6929, respectively) allow a state to administer and enforce a state hazardous waste program. If EPA determines that program to be equivalent to the federal program, EPA can authorize the state to administer the state program in lieu of the federal program. The authorized state must then maintain that program to be at least as stringent as the federal hazardous waste program. The authorized state is required to adopt EPA changes to the federal program that are more stringent or broader in scope than the existing federal program. Authorized states are not required to adopt federal amendments to the hazardous waste regulations that are less stringent than the existing federal hazardous waste program. However, in many cases, federal amendments that are less stringent involve streamlining, cost reduction, or implement other regulatory reduction initiatives.

FEDERAL REVISIONS: This rulemaking would incorporate by reference the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 273, revised as of July 1, 2005, and amended on August 5, 2005, at 70 FR 45508 through 70 FR 45522, including the following amendments: Table 1.

Federal Register Publication Date

Subject

69 FR 21737 69 FR 62217	April 22, 2004 October 25, 2004	National Environmental Performance Track System
69 FR 22602 70 FR 9138	April 26, 2004 February 24, 2005	NESHAP: Surface Coating of Automobiles and Light-Duty Trucks Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards (Hazardous Waste - Nonwastewaters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing)
70 FR 10776 70 FR 35034	March 4, 2005 June 16, 2005	Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System
70 FR 34538	June 14, 2005	Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB; Final Rule
70 FR 45508	August 5, 2005	Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment

The federal rules listed above are amendments to the federal hazardous waste regulations that would be incorporated by reference in the Indiana hazardous waste management rules at 329 IAC 3.1 or incorporated in full text in 329 IAC 13. The following amendments are optional (less stringent) but are proposed to be adopted to maintain consistency with the federal program and to allow regulated entities to realize the benefits of those changes:

- National Environmental Performance Track System (69 FR 21737). This change revises the hazardous waste regulations to allow hazardous waste generators who are members of EPA's National Environmental Performance Track System up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status. Seven (7) Indiana companies are members of Performance Track.
- NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (69 FR 22602). This change amends the hazardous waste rules to exempt air emissions from certain surface coating operations that are now covered by new national air emission standards in 40 CFR 63 from RCRA air emission standards in 40 CFR 264 and 40 CFR 265.
- Methods Innovation Rule and SW-846 Final Update IIIB (70 FR 34538). This change amends a variety of testing and monitoring requirements in the hazardous waste rules. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing requirements to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846," in conducting various testing and monitoring and by limiting required uses of an SW-846 method to circumstances where the method is used to measure a required method-defined parameter.
- Mercury Containing Equipment (70 FR 45508). This change adds mercury-containing equipment to the federal list of universal wastes regulated under the hazardous waste rules. Handlers of universal wastes are subject to less restrictive standards for storing, transporting, and collecting these wastes to facilitate recycling or proper disposal.

In contrast to the optional rules described above, authorized states are required by RCRA Section 3009 (42 U.S.C. 6929), 40 CFR 271.4 and 40 CFR 271.10 to adopt the following amendments to maintain consistency with the federal hazardous waste program:

- Hazardous Waste - Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing (70 FR 9138). This change adds hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug and cosmetic colorants (K181) to the list of hazardous waste in 40 CFR 261.32. This change also adds five (5) constituents to the list of hazardous waste constituents in 40 CFR 261, Appendix VIII, and adds land disposal restriction treatment standards for these constituents.
- Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System (70 FR 10776). This change revises the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of treatment or disposal. This change standardizes the content and appearance of the manifest form and continuation sheet (Forms 8700-22 and 22a), and makes the forms available from a greater number of sources. This change also adopts new procedures for tracking certain types of waste shipments with the manifest, including hazardous wastes that are rejected by destination facilities. At the same time, IDEM is proposing to repeal 329 IAC 3.1-7.5 that will be superceded by this change.

Both of these amendments are more stringent than the current federal hazardous waste program. RCRA Section 3009 (42 U.S.C. 6929) requires authorized states to maintain their hazardous waste programs to be at least as stringent as the federal program to retain authorization for the state program.

INDIANA ADDITIONS AND REVISIONS: In addition to incorporating recent federal amendments, IDEM proposes to amend 329 IAC 3.1-6-3 to more accurately describe the requirements for management of chemical munitions as acute hazardous wastes. The 2003 Hazardous Waste Annual Update amended 329 IAC 3.1-6-3 to clarify that chemical munitions including VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate) are acute hazardous wastes. This amendment provided that chemical munitions listed in this section must be managed in accordance with the requirements for acute hazardous wastes in the hazardous waste program. This amendment also provided that the commissioner can establish alternative requirements for these wastes. This last provision resulted in some confusion over what the alternative requirements would be and what they would be based on. In this rule IDEM intends to clarify what the alternative requirements are. The sole generator of I001 waste - the U.S. Army Newport Chemical Depot - has requested to use the satellite accumulation provisions in 40 CFR 262.34(c). IDEM has evaluated that request and determined that it will promote safety and help to expedite the disposal operation. IDEM is proposing to amend this section to remove the general statement about “alternative requirements” and substitute language that specifically allows use of those satellite accumulation provisions.

DELAYED EFFECTIVE DATE: Because the national compliance date for the federal manifest modification rule is September 5, 2006, the rule amendments proposed in the draft rule, except as described below, would become effective on that date. This will prevent conflicts with other states’ rules for regulated entities who ship hazardous waste to or from other states.

The clarification provided in the amendment to 329 IAC 3.1-6-3 is needed as soon as possible, and that change is independent of the incorporation by reference of the federal amendments. IDEM is proposing to make this amendment effective thirty (30) days after filing with the Secretary of State.

The National Environmental Performance Track Program amendments to 40 CFR 262.34 provide relief to regulated entities that are members of the program. Since there is no reason to delay access to these provisions, IDEM is proposing that those changes, as published in the Federal Register, become effective thirty (30) days after filing with the Secretary of State.

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

The following element of the draft rule imposes either a restriction or a requirement that is “not imposed under federal law” (NIFL elements).

NIFL ELEMENT 1. Amend 329 IAC 3.1-6-3 to accurately describe the requirements for management of chemical munitions as acute hazardous wastes.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: The current hazardous waste rules do not provide for use of the satellite accumulation provisions in 40 CFR 262.34(c) for acute hazardous wastes. Newport Chemical Depot does not feel that enforcement discretion provides adequate protection for their interests, and the variance process under IC 13-14-8-8 cannot be effective for the duration of the operation.

Examples in which federal law is inadequate: The federal hazardous waste program, as incorporated by reference, does not provide for use of the satellite accumulation provisions in 40 CFR 262.34(c) in this circumstance without a rule amendment.

Estimated fiscal impact and expected benefits: Newport Chemical Depot will be able to conduct their decontamination activities in a safer and more efficient manner. Newport Chemical Depot has not provided any data on actual cost savings associated with this element.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL 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

The potential fiscal impact of this rulemaking is estimated as follows:

Provision	Estimated Fiscal Impact
National Environmental Performance Track System (69 FR 21737)	The fiscal impact of this alternative is estimated to be a savings of \$1,350.00 per facility per year, or \$9,450.00 per year for the seven (7) Performance Track facilities in Indiana, as described in the final rule published April 22, 2004 (Section IV.A. “What Are the Cost and Economic Impacts?”, at 69 FR 21749).
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (69 FR 22602)	The fiscal impact of this alternative is estimated to be no additional costs or savings resulting from this amendment. This amendment excludes facilities that surface coat automobiles and light-duty trucks and that are affected by the NESHAP from compliance with 40 CFR 264, Subpart BB. See the final rule published April 26, 2004, Section V.B. “What Are the Cost Impacts?” at 69 FR 22618.

Hazardous Waste - Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing (70 FR 9138)	The total compliance costs of this alternative are estimated by EPA to range from \$490,000 per year to \$2,380,000 per year nationwide, or \$9,800 per year to \$47,600 per year to regulated entities in Indiana, assuming that the compliance costs in Indiana are 2% of the national cost. The economic impact of these amendments is estimated by EPA to range from negligible to 0.238% of gross corporate revenues. See the analysis of the economic impacts of this rule in Section VIII.A., "Executive Order 12866: Regulatory Planning and Review," beginning at 70 FR 9169 of the February 24, 2005, final rule. However, because this is a new listing, no Indiana entity has reported that they manage these wastes.
Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System (70 FR 10776)	The fiscal impact of this alternative is estimated to be a four percent (4%) to five percent (5%) average annual paperwork burden reduction for regulated entities in Indiana and state government, representing an annual cost savings of approximately \$254,000 to \$412,000 to regulated entities in Indiana, based on 2% of the national economic impact cited in the final rule published on March 4, 2005 in Section VII.A. "Executive Order 12866: Regulatory Planning and Review" at 70 FR 10811 through 10812.
Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB; Final Rule (70 FR 34538)	The fiscal impact of this alternative is unquantifiable at this time. The EPA did not publish an economic impact analysis for this rule, and IDEM has no independent means to determine which regulated entities might take advantage of these provisions and what the fiscal impact of those actions might be. However, IDEM anticipates that the flexibility provided by this amendment will result in benefits to regulated entities, including some reduced costs.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment (MCE)(70 FR 45508)	EPA estimated that 1,877 generators handling approximately 550 tons of MCE would be affected by this rule. EPA estimates a cost savings of \$273,000 per year: \$200,000 to generators (\$106 per generator per year) and \$73,000 to processors and waste brokers. Based on 2% of the national impact, this would result in an estimated annual savings of \$5460 to regulated entities in Indiana. See the summary of economic impacts of this rule in Section VIII.a., "Executive Order 12866: Regulatory Planning and Review," at 70 FR 45517.
Amend 329 IAC 3.1-6-3 to more accurately describe the requirements for management of chemical munitions as acute hazardous wastes	The Newport Chemical Depot has not estimated the potential economic impact of this amendment to their program to dispose of chemical munitions. IDEM has no independent information to use to estimate this economic impact.
Total estimated annual fiscal impact of known costs	Annual cost savings: \$259,110 to \$379,310

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:

#05-66(SWMB) [2005 Hazardous Waste Annual Update Workgroup]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

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 Mojonniere, 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.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from May 1, 2005 through May 31, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

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:

#05-66(SWMB)[2005 Hazardous Waste Annual Update]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

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 (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) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 31, 2005.

DRAFT RULE

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 28 IR 2661, 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, ~~2003~~ **2005, and amended on August 5, 2005, at 70 FR 45520 through 70 FR 45522.**

(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, revised as of July 1, ~~2003~~ **2005.**
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, ~~2003~~ **2005.**
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, ~~2003~~ **2005.**
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, ~~2003~~ **2005.**
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, ~~2003~~ **2005.**
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, ~~2003~~ **2005.**
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, ~~2003~~ **2005.**
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, ~~2003~~ **2005.**
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, ~~2003~~ **2005.**

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, ~~Government Printing Office, Washington, D.C. 20402~~; **P.O. Box 371954, Pittsburgh, PA 15250-7954, or on-line at <http://bookstore.gpo.gov/>**. The telephone number for the Government Printing Office is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(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.

(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.

(g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661)

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

329 IAC 3.1-1-9 Conversion of federal terms

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

Affected: IC 13-14-8; 40 CFR 260 through 40 CFR 270

Sec. 9. (a) When used in 40 CFR, as adopted in this article, substitute the following unless otherwise indicated:

- (1) "Act" means the Environmental Management Act.
- (2) "Administrator" means the commissioner of the Indiana department of environmental management.
- (3) "Agency" means the Indiana department of environmental management.
- (4) "Director" means the commissioner of the Indiana department of environmental management.
- (5) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
- (6) "He" means he, she, or it, without regard to gender.
- (7) "Notification requirements of section 3010" means the notification requirements of this article.
- (8) "RCRA permit" means state hazardous waste permit.
- (9) "Regional administrator" means the commissioner of the Indiana department of environmental management.
- (10) "She" means he, she, or it, without regard to gender.
- (11) "State", "authorized state", "approved state", and "approved program" means Indiana, except at:
 - (A) 40 CFR 260.10 in the definitions of "person", "state", and "United States";
 - (B) 40 CFR 262; or
 - (C) 40 CFR 270.2 in the definitions of "approved program" or "approved state", "director", "final authorization", "person", and "state".
- (12) "United States" means the state of Indiana.
- (13) "Variance" means exemption.

(b) The following definitions found in 40 CFR 260.10 are excluded from the substitution of "commissioner of the Indiana department of environmental management" for "administrator" or "regional administrator" in subsection (a):

- (1) Administrator.
- (2) Hazardous waste constituent.
- (3) Regional administrator.

(c) The following definitions found in 40 CFR 260.10 are excluded from the substitution of "Indiana department of environmental management" for "environmental protection agency" in subsection (a):

- (1) Administrator.

- (2) EPA region.
- (3) Regional administrator.

(d) The substitution of terms in subsection (a) does not apply in the following portions of 40 CFR 260 through 40 CFR 270 as adopted in this rule:

- (1) 40 CFR 261.6(a)(3)(i)(A).
- (2) 40 CFR 261.6(a)(3)(i)(B).
- (3) 40 CFR 262.11.
- (4) 40 CFR 262.21.**
- ~~(4)~~ **(5)** 40 CFR 262.51.
- ~~(5)~~ **(6)** 40 CFR 262.52.
- ~~(6)~~ **(7)** 40 CFR 262.53. See 329 IAC 3.1-7-2 for additional information.
- ~~(7)~~ **(8)** 40 CFR 262.54. See 329 IAC 3.1-7-2 for additional information.
- (9) 40 CFR 262.60.**
- ~~(8)~~ **(10)** 40 CFR 264.12(a).
- ~~(9)~~ **(11)** 40 CFR 265.12(a).
- ~~(10)~~ **(12)** 40 CFR 270.2.
- ~~(11)~~ **(13)** 40 CFR 270.5.
- ~~(12)~~ **(14)** 40 CFR 270.11(a)(3).
- ~~(13)~~ **(15)** 40 CFR 270.32(b)(2).
- ~~(14)~~ **(16)** 40 CFR 270.32(c).
- ~~(15)~~ **(17)** 40 CFR 270.72(a)(5).
- ~~(16)~~ **(18)** 40 CFR 270.72(b)(5).

(e) In 40 CFR 263, all references to “EPA”, “United States”, and “administrator” are retained. (*Solid Waste Management Board; 329 IAC 3.1-1-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 3. 329 IAC 3.1-1-14.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-14.1 Fees

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

Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 14.1. (a) The following definitions apply throughout this section:

- (1) “Boilers and industrial furnaces” or “BIFs” means facilities as defined under “boilers” and “industrial furnaces” in 40 CFR 260.10.
- (2) “Class 2 modification” refers to the modification classification system described under 40 CFR 270.42.
- (3) “Class 3 modification” refers to the modification classification system described under 40 CFR 270.42.
- (4) “Generator” or “LQG” means a person that:
 - (A) during the preceding calendar year:
 - (i) generated in any calendar month more than one thousand (1,000) kilograms of hazardous waste or more than one (1) kilogram of acute hazardous waste;
 - (ii) regardless of a person’s rate of generation, accumulated at any time more than one (1) kilogram of acute hazardous waste; or
 - (iii) regardless of a person’s rate of generation, accumulated at any time more than six thousand (6,000) kilograms of hazardous waste; or
 - (B) generated or accumulated in any calendar month more than one hundred (100) kilograms of spill clean-up material contaminated with acute hazardous waste.
- (5) “Ground water monitoring well” means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.
- (6) “Land disposal” includes interim status and permitted hazardous waste landfills and interim status and permitted hazardous waste surface impoundments.
- (7) “Operation” or “operating”, for the purpose of this section, means the following:
 - (A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste

is present in the unit as of January 1.

(B) A disposal unit that will close leaving waste in place is considered operating until the unit has permanently stopped receiving waste as of January 1.

(8) "Storage" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste storage.

(9) "Treatment" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under 40 CFR 262.34, 40 CFR 261.4, and 40 CFR 261.6.

(10) "Treatment storage disposal" or "TSD" means the term as defined in 40 CFR 260.10.

(b) In accordance with IC 13-22-12-2, hazardous waste fees are as follows:

(1) New permit application fees are as follows:

(A) Land disposal	\$40,600
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$23,800
(D) Treatment (including boilers and industrial furnaces)	\$23,800

(2) Permit renewal and Class 3 modification fees are as follows:

(A) Land disposal	\$34,000
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$17,200
(D) Treatment (including boilers and industrial furnaces)	\$17,200

(3) Class 2 modification fee

\$2,250

(4) Annual operation fees are as follows:

(A) Land disposal	\$37,500
(B) Incinerator (per unit)	\$10,000
(C) Storage	\$2,500
(D) Treatment (including boilers and industrial furnaces)	\$10,000
(E) Generator	\$1,565
(F) Post-closure activity	\$1,500
(G) Ground water compliance sampling at active facilities (per well)	\$1,000

~~(5) Manifest fee~~ \$8

(c) Requirements for application fees are as follows:

(1) The fees must be submitted with the hazardous waste permit application. Hazardous waste permit applications will be denied without the application fee.

(2) The fees are not refundable once staff review of the application has commenced.

(d) The annual operation fee schedule is established in IC 13-22-12 and applies to the following:

(1) Annual operation fees established in IC 13-22-12-3 apply to facilities listed in subsection (b) that:

- (A) operate with a permit;
- (B) operate under interim status;
- (C) are a large quantity generator (LQG); or
- (D) otherwise manage hazardous waste subject to regulation under IC 13-22-2.

(2) Hazardous waste annual operation fees begin accruing January 1 of each year. The commissioner shall assess hazardous waste annual operation fees not later than January 15 for the current year's activities. However, this is based on a generator's previous year's activities as defined by the generator.

(3) Hazardous waste management facilities permitted as of January 1 of the assessed year must pay annual operations fees, even if not yet constructed or receiving waste.

(4) No waivers exist for large quantity generators (LQGs).

(5) Permitted TSDs that choose not to manage hazardous waste will be assessed a fee. Fees are assessed for facilities that have the ability to manage hazardous waste.

(6) Permitted treatment and storage facilities that close by removing all waste will not be assessed a post-closure fee because the facility is no longer regulated.

(7) Facilities that are issued a post-closure permit will be assessed the post-closure fee. Landfills will be assessed the fee for the duration of the post-closure period.

(8) A person shall remit a hazardous waste annual operation fee or an installment allowed by subsection (e) to the commissioner:

(A) no more than thirty (30) days after the date the fee is assessed; or

(B) by the date the installment is due.

(9) A person or facility that is described in more than one (1) category under this section shall pay all applicable fees.

(e) Installment payments are established as follows:

(1) The commissioner shall allow a person to remit installments on the annual fee if:

(A) the person determines that a single payment of the entire fee is an undue hardship; and

(B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.

(2) Installments are due **on a**:

(A) ~~on a~~ quarterly basis:

(i) February 15;

(ii) May 15;

(iii) August 15; and

(iv) November 15; or

(B) ~~on a~~ semiannual basis:

(i) February 15; and

(ii) August 15.

(3) The commissioner will not send a notice of the installment method to the person who notifies in subdivision (1)(B).

(f) In addition to the penalties described under IC 13-30-4, the following will occur:

(1) If a person does not remit a hazardous waste annual operation fee or an installment established under subsection (e)(2) **within**:

(A) ~~within~~ sixty (60) days after the date the fee is assessed; or

(B) ~~within~~ thirty (30) days after the date the installment is due;

the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable.

(2) The delinquency charge is due and payable:

(A) sixty (60) days after the date the hazardous waste annual operation fee is assessed; or

(B) thirty (30) days after the date the installment is due.

(3) If a person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge **within**:

(A) ~~within~~ ninety (90) days after the date the hazardous waste annual operation fee is assessed; or

(B) ~~within~~ sixty (60) days after the date the installment is due;

the commissioner may revoke the person's permit.

(4) Before revoking a person's permit ~~pursuant to~~ **under** subdivision (3), the commissioner shall send a written notice by certified mail that: ~~describes~~:

(A) **describes** what fees and delinquency charge are due; and

(B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.

(g) The fees and delinquency charges collected under this section must be:

(1) payable to the department; and

(2) deposited in the environmental management permit operation fund established under IC 13-15-11-3.

(Solid Waste Management Board; 329 IAC 3.1-1-14.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 4. 329 IAC 3.1-6-3, AS AMENDED AT 28 IR 2663, SECTION 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

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

- (1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).
- (2) GB (Isopropyl methyl phosphonofluoridate).
- (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 **in subdivisions (1) through (6)** 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.~~

(b) A generator may accumulate as much as fifty-five (55) gallons of waste derived from a waste listed in subsection (a)(6) at or near any point of generation where wastes initially accumulate, when that waste is managed in accordance with all other requirements of 40 CFR 262.34(c)(1). *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663)*

SECTION 5. 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.
- (4) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.
- (5) In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".
- (6) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.
- (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.
- (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.
- (9) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.
- (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.
- (11) The amendments to 40 CFR 262.34 that implement the National Environmental Performance Track Program for hazardous waste generators that are Performance Track members, published in the Federal Register at 69 FR 21753 through 69 FR 21754 on April 22, 2004, are incorporated by reference.**

(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 6. 329 IAC 13-3-1, AS AMENDED AT 28 IR 2666, SECTION 7, 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 279.10; 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, ~~2003~~: **2005**.

(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, ~~2003~~: **2005**, 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, ~~2003~~: **2005**. 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~~ **showing** 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, ~~2003~~: **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. 2005.** 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(3), to reclaim metalworking oils or fluids. The presumption does 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 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, ~~2003~~: **are 2005**, **is** 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, ~~2003~~: **2005**, 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~~ **Before** 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, ~~2003~~ **2005**.

(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~~ **before** 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~~ **before** 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~~ **Before** 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~~ **Before** 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) Used oil containing less than fifty (50) parts per million PCB is subject to the requirements 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, **the following:**

- (1) Road oiling.
- (2) General dust control.
- (3) Use as a pesticide or herbicide carrier. ~~and~~
- (4) 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2666*)

SECTION 7. 329 IAC 13-6-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-6-5 Rebuttable presumption for used oil

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 279.44

Sec. 5. (a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand (1,000) parts per million.

(b) The transporter must make this determination by:

- (1) testing the used oil; or
- (2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ **showing** that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA Publication SW-846, Third Edition, 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.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

- (1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(3), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
- (2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the transporter for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-6-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 8. 329 IAC 13-7-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-7-4 Rebuttable presumption for used oil

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 279.53

Sec. 4. (a) To ensure that used oil managed at a processing or re-refining facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the owner or operator of a used oil processing or re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The owner or operator must make this determination by:

(1) testing the used oil; or

(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ **showing** that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA publication SW-846, Third Edition, 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.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(Solid Waste Management Board; 329 IAC 13-7-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1506; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 9. 329 IAC 13-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-8-4 Rebuttable presumption for used oil

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 279.63

Sec. 4. (a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The used oil burner must determine if the used oil contains above or below one thousand (1,000) parts per million total halogens by:

(1) testing the used oil;

(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) if the used oil has been received from a processor or refiner subject to regulation under 329 IAC 13-7, using information provided by the processor or re-refiner.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it 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, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ **showing** that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA publication SW-846, Third Edition, 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.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

(1) 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 apply to metalworking oils or fluids if such

oils or fluids are recycled in any other manner or disposed.

(2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the burner for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1510; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 10. 329 IAC 3.1-7.5 IS REPEALED.

SECTION 11. **SECTIONS 1, 2, and 10 of this document take effect September 5, 2006.**

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 November 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 and 329 IAC 13.

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 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
Assistant Commissioner
Office of Land Quality