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## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

### **Proposed Rule** LSA Document #05-66

#### **DIGEST**

Adds 329 IAC 3.1-1-12.5 to provide a mailing address for notifications required in the article. Amends 329 IAC 3.1-1-7, 329 IAC 3.1-1-9, 329 IAC 3.1-7-2, 329 IAC 13-3-1, 329 IAC 13-6-5, 329 IAC 13-7-4, and 329 IAC 13-8-4 to incorporate 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). Amends 329 IAC 3.1-1-14.1 to eliminate an obsolete fee. Amends 329 IAC 3.1-6-3 to more accurately describe the actual requirements generators of those wastes must follow. Repeals 329 IAC 3.1-7.5. Partially effective 30 days after filing with the Secretary of State and partially effective on September 5, 2006.

#### **HISTORY**

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

Second Notice of Comment Period and Notice of First Hearing: October 1, 2005, Indiana Register (29 IR 223).

Date of First Hearing: November 15, 2005.

#### **PUBLIC COMMENTS UNDER IC 13-14-9-4.5**

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9, until the board has conducted a third comment period that is at least twenty-one (21) days long.

#### **REQUEST FOR PUBLIC COMMENTS**

Portions of this proposed rule are substantively different from the draft rule published on October 1, 2005, at 29 IR 223. The Indiana Department of Environmental Management (IDEM) is requesting comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule:

SECTION 3: 329 IAC 3.1-1-12.5.

SECTION 6: 329 IAC 3.1-7-2.

This notice requests the submission of comments on the sections of the proposed rule listed above, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Comments on additional sections of the proposed rule that the commentor believes are substantively different from the draft rule may also be submitted for the consideration of the board. Mailed comments should be addressed to:

#05-66 [2005 Hazardous Waste Annual Update]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

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 or hand delivered by January 22, 2006.

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

## **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from October 1, 2005, through October 31, 2005, on IDEM's draft rule language. No comments were received during the second comment period.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On November 15, 2005, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to 329 IAC 3.1 and 329 IAC 13. No comments were made at the first hearing.

## **FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY**

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

|                           |                        |
|---------------------------|------------------------|
| <b>329 IAC 3.1-1-7</b>    | <b>329 IAC 3.1-7.5</b> |
| <b>329 IAC 3.1-1-9</b>    | <b>329 IAC 13-3-1</b>  |
| <b>329 IAC 3.1-1-12.5</b> | <b>329 IAC 13-6-5</b>  |
| <b>329 IAC 3.1-1-14.1</b> | <b>329 IAC 13-7-4</b>  |
| <b>329 IAC 3.1-6-3</b>    | <b>329 IAC 13-8-4</b>  |
| <b>329 IAC 3.1-7-2</b>    |                        |

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 3.1-1-12.5 IS ADDED TO READ AS FOLLOWS:

**329 IAC 3.1-1-12.5 Mailing address for notifications**

**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. 12.5. Unless otherwise provided elsewhere in this article, notifications required by this article must be submitted to:**

**Indiana Department of Environmental Management**

**Office of Land Quality, Facility Data Analysis Section**

**Room 1101**

**100 North Senate Avenue**

**Indianapolis, IN 46204-2251.**

*(Solid Waste Management Board; 329 IAC 3.1-1-12.5)*

SECTION 4. 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 5. 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

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

The ~~above listed~~ chemical munitions **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 6. 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 "P" 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 "P" of the manifest form or item "R" of the continuation sheet.~~

~~(ii) The remaining EPA hazardous waste numbers may be entered in item "P" 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 "P".~~

~~(3) (2) 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) (3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.~~

~~(5) (4) In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".~~

~~(6) (5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.~~

~~(7) (6) 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) (7) 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) (8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.~~

~~(10) (9) 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.~~

**(10) 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 7. 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 8. 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 9. 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 10. 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 11. 329 IAC 3.1-7.5 IS REPEALED.

SECTION 12. **SECTIONS 1, 2, 5, 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 February 21, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed new rules and amendments to rules at 329 IAC 3.1 and 329 IAC 13.*

*The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules and amendments to rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Steve Mojonner, 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