

**Document:** IC 13-14-9 Notice, **Register Page Number:** 29 IR 2713

**Source:** May 1, 2006, Indiana Register, Volume 29, Number 8

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

### **SECOND NOTICE OF COMMENT PERIOD**

LSA Document #05-297(SWMB)

## **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SOLID WASTE PROCESSING FACILITIES AT 329 IAC 11**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 329 IAC 11 that implement certain provisions of Public Law 154-2005 (Senate Enrolled Act 279). By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks 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: November 1, 2005, Indiana Register (29 IR 694).

**CITATIONS AFFECTED:** 329 IAC 11-2-21.4; 329 IAC 11-2-28.4; 329 IAC 11-2-38.6; 329 IAC 11-2-43; 329 IAC 11-3-1; 329 IAC 11-4-1; 329 IAC 11-5-1; 329 IAC 11-5-2; 329 IAC 11-5-3; 329 IAC 11-5-4; 329 IAC 11-5-6; 329 IAC 11-5-7; 329 IAC 11-9-5; 329 IAC 11-11-5; 329 IAC 11-13-3; 329 IAC 11-13-4; 329 IAC 11-15-1; 329 IAC 11-15-3; 329 IAC 11-15-5.

**AUTHORITY:** IC 4-22-2; IC 13-14-8; IC 13-14-8-2; IC 13-14-9; IC 13-15-2; IC 13-19-3; P.L.154-2005.

### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

#### **Basic Purpose and Background**

This rulemaking implements provisions of P.L.154-2005 with regard to solid waste processing facilities and proposes clarification and transition language for these provisions consistent with the regulatory scheme of 329 IAC 11.

These changes include the following:

Adding additional categories of facilities to the definition of “solid waste processing facility” to be consistent with the amended statutory definition at IC 13-11-2-212.

Providing a transition period for permitting additional categories of solid waste processing facilities.

Revising the general exclusions at 329 IAC 11-3-1(5) to clarify language and implement the amended definition of solid waste processing facility.

Amending 329 IAC 11-9-5 regarding demonstrations of need to exclude transfer stations.

Amending 329 IAC 11-11-5 to provide comprehensive requirements for transferring permits and ownership.

Removing certain references to the requirements of IC 13-20-6.

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

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is “not imposed under federal law” (NIFL element).

*The following information is provided with each NIFL element:*

(1) *The environmental circumstance or hazard that dictates the imposition of the NIFL element in order to protect human health and the environment.*

(2) *examples in which federal law is inadequate to provide this protection for Indiana; and*

(3) *(a) the estimated fiscal impact; and*

*(b) expected benefits;*

*based on the extent to which the proposed rule exceeds the requirements of federal law.*

#### **NIFL Element A**

The draft rule requires that the definition of a solid waste processing facility be expanded to include medical and infectious waste treatment facilities at 329 IAC 11-2-43(8).

(1) Medical waste has the potential to be infectious and harmful to human health if not properly managed.

(2) Medical waste treatment facilities are currently not regulated by federal law.

(3)(a) There is no estimated fiscal impact of this element, as it is a requirement of P.L. 154-2005. The permit fee for these facilities is determined by state statute (IC 13-20-21).

(b) The expected benefit of this rule is the protection of human health and the environment from potentially harmful waste products.

#### **NIFL Element B**

The draft rule requires that the definition of a solid waste processing facility at 329 IAC 11-2-43(9) be expanded to include solid waste solidification facilities not located on an operating permitted landfill.

(1) Current IDEM rules prohibit the disposal of liquids into landfills. These facilities are mixing absorbent material with the liquid industrial waste so the resultant solids will be accepted for disposal at a landfill.

(2) There is currently no federal law to regulate these facilities.

(3)(a) There is no estimated fiscal impact of this element as it is a requirement of P.L. 154-2005. The permit fee for these facilities is determined by state statute (IC 13-20-21).

(b) The expected benefits will be to assure a structured and safe method in which these facilities treat wastes.

#### **NIFL Element C**

The draft rule requires that the definition of a solid waste processing facility be expanded at 329 IAC 11-2-43(10) to include facilities that use plasma arc or another source of heat to treat solid waste.

(1) Plasma arc and heat associated technology has the potential to be dangerous and harmful to human health if not properly managed.

A plasma torch is a device that converts electrical energy into thermal energy. Plasma is an ionized gas that is conditioned to respond to electromagnetic forces. The plasma arc is created when a voltage is established between two points. The plasma acts as a resistive heating element, which presents a distinct advantage over any solid heating element as it is a gas and cannot melt and fail. The plasma arc creates a "flame" that has temperatures ranging from 4,000 degrees Centigrade to over 7,000 degrees Centigrade.

(2) There is currently no federal law to regulate these facilities.

(3)(a) There is no estimated fiscal impact of this element, as it is a requirement of P.L. 154-2005. The permit fee for these facilities is determined by state statute (IC 13-20-21).

(b) The expected benefits will be to assure a structured and safe method in which these facilities treat wastes.

#### **For all elements:**

**Health criteria:** Criteria is available at IDEM, the Indiana State Board of Health and U.S. EPA.\*

**Analytical methods:** Not applicable.

**Treatment technology:** Criteria is available at IDEM and U.S. EPA.\*

**Economic impact data:** Not applicable.

**Environmental assessment data:** Criteria is available at IDEM and U.S. EPA.\*

**Analysis of methods to effectively implement the proposed rule:** Permitting structure in place; no analysis needed. Information on the permitting structure available at IDEM.\*

\*Referenced information regarding these NIFL elements may be obtained by contacting Lou McFadden at IDEM, Office of Land Quality, Rules, Planning and Outreach Section, 1-800-451-6027 (in Indiana).

#### **Potential Fiscal Impact**

These rule amendments do not have a potential fiscal impact in excess of five hundred thousand dollars (\$500,000).

#### **Public Participation and Workgroup Information**

No external workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-8922 or (800) 451-6021 (in Indiana).

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

IDEM requested public comment from November 1, 2005, through November 30, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Gary Blaze, Indianapolis Plant, Metalworking Lubricants Company (MLC)

Tita LaGrimes, Pollution Control Industries (PCI)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* IDEM should exempt facilities that already possess permits from the Office of Land Quality from the new permit requirement; or, absent that, waive, recognize, or incorporate those requirements that are already covered or fulfilled through compliance with other environmental regulatory programs.

While it is recognized the recent statutory addition to the definition of a Solid Waste Processing Facility: "A solid waste

solidification facility that is not located on an operating, permitted landfill”, was legislative in origin, it at least recognizes that not all facilities require the same degree of regulatory oversight or permitting. This reality could easily be extended through the rulemaking process to other types of facilities that already afford similar, or greater environmental protection than do landfills and that have more expertise in the handling of industrial wastes. In fact, failure to do so would provide an economic benefit to landfills relative to other industrial or waste management facilities that are normally subject to even more intensive regulatory oversight and requirements than are landfills.

It is not clear to us why the statute would consider “landfills”, that are permitted for the disposal of only “municipal solid waste”, to offer capabilities that warrant an exclusion that is not provided for hazardous waste management permitted facilities, or other industrial facilities that are already subject to extensive training, operational, and physical plant requirements for the handling of industrial waste. This rulemaking would be an opportunity for the State to address this issue. Certainly, a permitted hazardous waste management facility should be considered compliant and competent for the solidification of solid (non-hazardous) waste without the necessity of a separate permit.

This legislative omission can easily be corrected through the upcoming rulemaking by amending the definition of “solid waste processing facility” to state: “A solid waste solidification facility that is not located on an operating permitted landfill or at a hazardous waste management facility.”(MLC)

*Response:* IDEM does not have the legal authority in this rulemaking to amend or extend the statutory definition of “solid waste processing facility” as amended by the legislature. The facility that holds a valid Hazardous Waste permit under 329 IAC 3.1 can be excluded from solid waste processing permitting under 329 IAC 11-3-2(d): “*Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility*”.

It should be also pointed out that landfill solidification operations are required to be permitted under the landfill’s permit, and are not without their own costs. A minor modification permit costing two thousand and five hundred dollars (\$2,500) is required before a landfill solidification operation can begin. In addition, a landfill solidification operation must be located over the lined portion of the landfill, and built with its own liner and a container system. These requirements thus pose comparable costs for a MSWLF conducting liquid waste solidification.

Finally, a hazardous waste permit only covers the location and activities of hazardous waste management at the facility site. If a facility conducts solid waste processing activities along with hazardous waste management activities, then two permits are required because there are two discrete sets of activities being regulated at the facility.

*Comment:* If facilities that maintain hazardous waste management permits are not exempted from these permit requirements, IDEM should at least consolidate permits for facilities that already possess permits from the Office of Land Quality and/or waive or incorporate certain requirements that are already covered or fulfilled through compliance with other environmental regulatory programs. MLC currently maintains three (3) major Permits from IDEM authored environmental regulatory programs: Land Quality, Air Quality, and Water Quality. Each of these Permits require significant Permit application, renewal, and/or operating fees to the IDEM, necessitate significant permit application preparation and submittal costs, and include public notification and participation. Compliance with these Permits, and other regulatory programs mentioned, already ensure that no environmental or public health concerns will be created or maintained at the facility, and another IDEM permit concerning this particular activity would be redundant at best. The IDEM has the authority and capability to consolidate environmental requirements into a single permit that would otherwise be included in more than one permit at IC 13-15-2-2, and MLC further suggest that the requirements and standards already imposed upon our facility and its operations be recognized-in lieu of asserting that yet another permit is required. It is recommended that an exclusion, similar to the following, be included under 329 IAC 11-3-2: “(e) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, processing, or disposal of non-hazardous solid waste where the solid waste processing operation and activities are included within the description and terms of the hazardous waste management permit”.

This could, in effect, replace the existing exemption at 329 IAC 11-3-2(d). Such a provision would allow treatment of solid waste streams, including solidification, at permitted hazardous waste facilities, on the condition that the solid waste processing operation be encompassed by the facility waste characterization plan, contingency plan, closure plan, etc. This approach would allow any pertinent requirements of 329 IAC 11 to be incorporated into existing permits, through permit modification or upon their renewal, while excluding those requirements that would be redundant or inapplicable at such facilities. (MLC)

*Response:* The difficulty with consolidating permits is that, for instance, a hazardous waste permit only covers the location and activities of hazardous waste management at the facility site. If a facility conducts solid waste processing activities along with hazardous waste management activities, then two permits are required because there are two discrete sets of activities being regulated at the facility. There are also two sets of regulatory standards that must be complied with. Solid waste permit applications could include the same contingency plans as a facility’s hazardous waste plan, if applicable; however, the contingency plan must be adapted to accept solid waste.

*Comment:* Rule 3 of 329 IAC 11-3-1, Exclusions, at paragraph (5) states that “*Processing, except for incineration, in which the*

waste, other than tires, has been segregated from the general solid waste stream prior to arrival at the processing site” is not subject to the provisions of this article (Solid Waste Processing Facilities). IDEM has historically relied on this exemption to exclude facilities processing such generator-separated and industrial waste streams from coverage under this Article. The recent legislative change to the statutory definition of “solid waste processing facilities” did not address the existing exclusions under 329 IAC 11.

The waste streams that MLC “solidifies” are either residual wastes from their used oil processing or wastewater treatment operations, or are “industrial” wastes that are segregated by the generator prior to their arrival at our plant. Accordingly, the subsequent treatment or recovery of such segregated wastes, that were never a part of a general solid waste stream, would appear to be exempt from Article 11 entirely as it is presently constructed.

However, IDEM, in its Notice, indicates that this exclusion is to be amended. Can IDEM clarify the extent of its anticipated amendment of this section of the Article? As will be pointed out in subsequent comments, the standards under 329 IAC 11 appear to have been originally intended to regulate traditional or “municipal solid waste” processing and may not be the best vehicle to regulate the processing of industrial waste streams -at least not without significant amendment. (MLC)

*Response:* The proposed amendment to this section is included in the draft accompanying this notice. Waste processing at the site of generation is a process that is excluded from the solid waste permit requirement under 329 IAC 11-3-1(6). To address your concerns about solid waste generated at the facility, IDEM acknowledges its previous position on the solidification activity; however, the legislature recently revised the statute to specifically include solid waste solidification facilities in the definition of a solid waste processing facility at IC 13-11-2-212. It would be inconsistent with the legislature’s mandate to include a solidification facility as a category of solid waste processing facility, then exempt that very facility from regulation under the solid waste processing rules.

It should also be taken into consideration that the original intent of the segregated waste exclusion was to allow household bottle and can recyclers to operate without the burden of obtaining a solid waste processing facility permit. Unfortunately our earlier interpretation of this exclusion expanded it far beyond this intent, resulting in unpermitted and minimally regulated processing of “segregated” industrial wastes.

*Comment:* Rule 3 of 329 IAC 11, Exclusions, at paragraph (6) states that “*Processing, except for incineration, of solid waste that takes place at the generating facility, is not subject to the provisions of this Article*”. MLC generates residual waste streams from its used oil recycling and wastewater treatment of used oils and wastewater received from other facilities. These recycling and treatment operations are conducted in full compliance with the Used Oil Management Standards under 40 CFR 279, and the Centralized Waste Treatment Industry Effluent Guidelines and Standards under 40 CFR 437 (and equivalent IDEM regulations). Some residuals from the recycling or treatment of these materials are then “solidified” for off-site disposal. Solidification is performed on these “oil containing” treatment and reclamation residuals to ensure that they pass the paint filter test for proper disposal at a permitted landfill. Can MLC assume that the “solidification” of these residuals, that are generated through our operations, qualify for this exemption, even though they are derived from used oils or wastewater sent to our Indianapolis plant for recycling or treatment from off-site facilities? (MLC)

*Response:* Yes, IDEM agrees with that assumption. However, any wastes that are separately received on-site and processed directly to the solidification process would be subject to a solid waste processing permit.

*Comment:* As IDEM is now asserting that “solidification” or “solidification facilities” require a permit under the subject Article, 329 IAC 11, *Solid Waste Processing Facilities*, if MLC were to perform other means of treating the subject residual waste, such as liquefaction or homogenization of the wastes to make them suitable for burning in industrial boilers or furnaces, rather than performing solidification for subsequent disposal at a solid waste landfill, would IDEM still contend that a Permit is required under this Article?

It should be noted that the process envisioned would not include any of the specific activities included with either the statutory, or regulatory, definition of a “Solid Waste Processing Facility”. That is, it would not involve solidification, incineration, a transfer station, solid waste baler, resource recovery system, composting facility, or a garbage grinding facility. It is entirely possible that the residuals could be shipped directly to an approved boiler, industrial furnace, or cement kiln to be burned for energy recovery with no additional treatment (the oily residuals have a significant fuel value). (MLC)

*Response:* Based on the information provided, the described activities would not require a solid waste processing permit. However, it is the facility’s responsibility to assure compliance with applicable rules.

*Comment:* Numerous provisions of Article 329 IAC 11 apply standards that would have to be considered inapplicable, contradictory, or redundant to the MLC facility, at which the “solidification” of residual treatment and recycling wastes are integral to our already regulated activities, and which is not open to the public. Many of the Article 11 requirements seem geared to “municipal solid waste” management, rather than “industrial process waste”. Examples of some of the inapplicable requirements would include the lengthy and prescriptive application process, a “determination of need”, the extensive public notice and zoning confirmations, provision of sanitary toilet facilities, all-weather roads, signs with operating hours and fees, quarterly tonnage reporting, etc.

As noted in several of our comments, MLC is already required, through several other permits or regulatory programs, to comply with the substantive provisions of this Article that seek to afford environmental protection. However, a number of the regulatory

requirements in this Article appear to conflict with the terms of other Permits or regulatory compliance programs. An example would be posting of signs giving hours of operation to the public, when this is a permitted hazardous waste management facility, with restricted access. MLC “solidifies” only residual waste generated by its own oil recycling and wastewater treatment operations and other “oily” wastes from specific industrial customers based on our written waste analysis plan and acceptance procedures. The facility is not open to the general public and does not accept or handle other “solid wastes”. (MLC)

*Response:* IDEM tries to account for all contingencies in its rules. Sometimes certain requirements are not pertinent to all regulated entities. IDEM takes this into account in issuing individual permits. For example, certain provisions of the sanitation rule are only applicable if salvaging activities are undertaken. IDEM has also, in the draft rule, proposed standards for signs at facilities not open to the public. However, some of the requirements mentioned must apply whether or not a facility accepts “outside wastes.”

Please also note that as comprehensive as the listed permits and programs may be, they do not directly address the current solidification process. They are also not pertinent to the fact that another regulatory program can require additional permitting of specific activities, as is the case for MLC, even when other activities are properly permitted and managed. This is particularly true if a material is excluded from a specific regulatory program. The Used Oil Management rules, for instance, state at 329 IAC 13-3-1(e)(3) that “...materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and are thus not subject to this article (329 IAC 13); 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.”

*Comment:* While the application content, and the permit issuance procedures, are fairly specific and lengthy in Article 11, almost no technical standards are included for the construction and operation of “solidification” (or even the defined types of solid waste processing) facilities. The term “solidification” has yet to be defined, and the construction and operational requirements that do exist in the current rule are so vague as to be capricious. Those requirements that do have some specificity appear to be geared toward municipal solid waste handling facilities (such as transfer stations or incinerators) - rather than an existing industrial, used oil processing, or centralized wastewater treatment plant.

Based on earlier telephone conversations with IDEM Office of Land Quality staff, there is also some concern as to what portion of MLC’s facility IDEM considers to be the “solid waste processing facility” that would be subject to a Permit under this Article. The waste “solidification” that is conducted is performed on a relatively small concrete slab with berms that is immediately adjacent to our water treatment plant. However, MLC has approximately 2,000,000 gallons of tank capacity and other equipment for used oil processing, recycled oil blending, and wastewater treatment. This equipment is used for the processing of used oil and wastewater from off-site facilities. What does IDEM consider to be the “solid waste processing facility” that is subject to such a Permit? As explained in these comments, almost all of MLC’s operations are already permitted under other state (IDEM), City (Indianapolis Department of Public Works), and federal (U.S. EPA) programs. (MLC)

*Response:* The purpose of the rulemaking is to amend the solid waste processing facility definition to be consistent with the 2005 legislation. IDEM proposes to define “solidification” in the draft rule. Only the portions of a facility that process and solidify solid waste would be subject to being permitted under a solid waste processing facility permit. Hazardous waste facility processing would be covered under 329 IAC 3.1. Given the variety of ways that wastes may be legitimately solidified, IDEM did not want to dictate a specific approach. The primary concern is that the wastes are managed in a manner that does not adversely impact human health or the environment.

*Comment:* MLC would also like to point out a potential conflict in the definition of a “solid waste facility” or “facility” at 329 IAC 11-2-40, and the terms of 329 IAC 11-3-2 *Exclusions; hazardous waste*. These clauses, taken together, imply that hazardous wastes could not be processed at any *solid waste facility* regulated under Article 11. The definition of solid waste facility, which includes “*all contiguous land and structures*”, would include our permitted hazardous waste management operations. However, the exclusion forbids process of hazardous waste at any solid waste facility regulated under Article 11. (MLC)

*Response:* Only the portions of a facility that process and handle solid waste would be subject to being permitted under a solid waste processing facility permit. Hazardous waste facility processing areas would be covered under 329 IAC 3.1. The complete definitions allow IDEM to delineate what facility areas and structures are permitted for each regulatory program applicable to the facility. Facilities can share equipment or storage areas for processing of either solid or hazardous waste as long as each facility complies with respective permits for each waste type and treatment. If a facility has only a hazardous waste permit and treats solid waste in accordance with the hazardous waste permit, then processing of the solid waste under the hazardous waste permit is acceptable.

*Comment:* As noted throughout these comments, Metalworking Lubricants Company is already subject to numerous permit and regulatory programs, and no substantive or material increase in environmental or public health protection will result from the imposition of the proposed solid waste processing facility permit at our facility. Adequate preventative, administrative, and response mechanisms are already in place at the facility, through other regulatory programs, to prevent any release to the environment or adverse exposure to human health from this activity. The only results to Metalworking under the proposed amendments will be an increased administrative burden, additional permit and operating fees, additional consulting fees, and the imposition of redundant

(if not conflicting) requirements. The new IDEM Permit and annual operating fees alone will be \$22,150 for the term of the five (5) year Permit. The costs for preparation of the application, including preparation of as-built plans and specifications for the solidification containment area, professional engineer certification, and other application components may be upwards of \$16,000. Management, legal, and personnel costs and expenses to MLC would approximate \$6,500 to obtain the Permit. Administrative, record-keeping and reporting, and any permit modification fees (\$2,200 each) may easily exceed another \$14,500 in costs during the term of the permit. The preceding costs also presume that the subject regulations are clear, realistic, and understandable- a matter yet to be determined.

Unless providing for exemptions from 329 IAC 11, IDEM should exercise flexibility granted the agency at IC 13-15-2-2(4) and (5) to consolidate environmental requirements into one (1) permit, thereby reducing the time and money spent by owners and operators of facilities, and the IDEM, on administrative tasks that do not benefit the environment. MLC, at this time, is undergoing the renewal process for its Hazardous Waste Management Permit, also to be issued by the Office of Land Quality. MLC is not trying here to evade any legitimate requirements to safeguard public health or the environment, rather, we contend that those are already in place through our compliance with numerous other regulatory programs. We are, however, opposed to the imposition of additional permit fees, redundant requirements, repetitive application and public notice procedures, and other burdens that provide no benefit to anyone. (MLC)

*Response:* IDEM is open to combining or coordinating certain administrative procedures that would encompass multiple permits and avoid duplication of procedures. Solid waste permit applications could also, for instance, include the same contingency plans as a facility's hazardous waste plan, (if applicable), however, the permit plans must be adapted to accept solid waste. However, a hazardous waste permit only covers the location and activities of hazardous waste management at the facility site. If a facility conducts solid waste processing activities along with hazardous waste management activities, then two permits are required because there are two distinct sets of activities being regulated at the facility.

*Comment:* Finally, we would like to express our belief that, unless redressed by administrative rule revisions of the nature suggested herein, the recent legislative amendments to the enabling statute will reduce waste solidification capacity in the State, reduce competition, raise operating costs for industry, and unduly favor landfills. In light of these considerations, MLC restates its belief that IDEM should fully explore and implement other options and exemptions as suggested in these comments. (MLC)

*Response:* IDEM's goal is to assure that facilities receiving industrial waste streams and conducting solidification processes are doing so in a manner that is protective of human health and the environment.

*Comment:* As noted previously, PCI does not believe that a substantive public health or environmental protection benefit will be gained at our particular facility by the imposition of this new permit requirement. Rather, it will create additional regulatory liability and economic burden on our facility, and our waste management and recovery business. Unless addressed through this rulemaking, it will also allow unfair competitive advantage to permitted solid waste landfills, as opposed to other permitted waste management facilities, as the statute exempts solidification operations at landfills from the requirement to obtain a separate solid waste processing facility permit. (PCI)

*Response:* Permitted solid waste landfills are exempted because the activity is included in their landfill permit and the exemption language is included in the legislation that amended the definition of solid waste processing facility. It should also be pointed out that landfill solidification operations are required to be permitted under the landfill's permit, and are not without their costs. A minor modification permit costing two thousand and five hundred dollars (\$2,500) is required before a landfill solidification operation can begin. In addition, a landfill solidification operation must be located over the lined portion of the landfill, and built with its own liner and container system. These requirements thus pose comparable costs for a MSWLF conducting liquid waste solidification.

*Comment:* PCI sincerely believes, as a permitted hazardous waste management facility, that the imposition of yet another permit requirement and regulatory program on their operations creates an unwarranted expense and administrative burden - without any corresponding benefit in the form of increased protection to the environment or public health. The minimum cost for such a permit, starting with IDEM's \$12,500 permit fee and \$2,000 annual operating fee, and including costs for a professional engineer to prepare and certify as-built plans and specifications for our existing facility at approximately \$6,500, a further \$10,000 in consulting fees for final permit application preparation, and perhaps \$6,500 in direct and indirect costs to PCI personnel, totals over \$36,000 for the initial permit. This does not include the additional costs that will accrue during the application process from anticipated confusion in demonstrating compliance with standards as capricious as those contained in the current rules. The limited permit term of only five (5) years and annual operating fees of \$2,000 to IDEM are a further burden. PCI's direct and indirect costs in administering such a redundant compliance program are at present unknown but, based on our experience, will be significant. Yet another consideration is IDEM's fee of \$2,200 for each minor permit modification.

As previously related, PCI first requests that 329 IAC 11, *Solid Waste Processing Facilities*, continue to exempt [at 329 IAC 11-3-1(5)] the processing of *source-segregated* solid wastes from the permit requirements under this Article, including those facilities engaged in solid waste "solidification" process. While this particular exclusion may require some clarification, there appears to be no need, or expressed legislative intent, to abandon it.

As an alternative to the above, we request that facilities maintaining a valid hazardous waste management permit under 329 IAC

3.1 be exempted from the necessity to obtain a solid waste processing permit under 329 IAC 11. The IDEM could accomplish this simply by amending the regulatory definition of a “solid waste processing facility” at 329 IAC 11-2-45 to include the following:....A solid waste solidification facility that is not located on an operating, permitted landfill or at a permitted hazardous waste management facility.”

We appreciate the opportunity to submit these comment, as well as IDEM’s difficult role in promulgating fair and reasonable administrative rules to incorporate the recent legislative amendments to the enabling statute. (PCI)

*Response:* IDEM does not have the legal authority in this rulemaking to amend or extend the statutory definition of “solid waste processing facility” as amended by the legislature. The facility that holds a valid hazardous waste permit under 329 IAC 3.1 can only be excluded from solid waste processing permitting under 329 IAC 11-3-2(d): “*Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility*”.

Finally, a hazardous waste permit only covers the location and activities of hazardous waste management at the facility site. If a facility conducts solid waste processing activities along with hazardous waste management activities, then two permits are required because there are two discrete sets of activities, and usually, two different locations subject to permitting at the facility.

## 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 draft rule. Mailed comments should be addressed to:

#05-279(SWMB)[Amendments to 329 IAC 11 ]

Marjorie Samuel

c/o Administrative Assistant

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:00 a.m. and 4:30 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-7995.

## COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 31, 2006.

Additional information regarding this action may be obtained from Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8922 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. 329 IAC 11-2-21.4 IS ADDED TO READ AS FOLLOWS:

### 329 IAC 11-2-21.4 “Medical waste” defined

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

**Affected:** IC 13-30-2; IC 25-31; IC 36-9-30

**Sec. 21.4. “Medical waste” means any solid waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, excluding either of the following:**

**(1) Hazardous waste identified or listed under 329 IAC 3.1.**

**(2) Any household waste as defined in 329 IAC 10-2-90.**

*(Solid Waste Management Board; 329 IAC 11-2-21.4)*

SECTION 2. 329 IAC 11-2-28.4 IS ADDED TO READ AS FOLLOWS:

### 329 IAC 11-2-28.4 “Plasma arc treatment” defined

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

**Affected: IC 13-30-2; IC 25-31; IC 36-9-30**

**Sec. 28.4. "Plasma arc treatment" means the process of:**

- (1) putting waste into an enclosed chamber; and**
- (2) introducing a high energy electrical arc that:**
  - (A) produces intense heat; and**
  - (B) breaks down the organic molecules of the waste into their elemental atoms.**

*(Solid Waste Management Board; 329 IAC 11-2-28.4)*

SECTION 3. 329 IAC 11-2-38.6 IS ADDED TO READ AS FOLLOWS:

**329 IAC 11-2-38.6 "Solidification" defined**

**Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10**

**Affected: IC 13-30-2; IC 25-31; IC 36-9-30**

**Sec. 38.6. "Solidification" means the process of combining a liquid waste with material or other wastes to produce a waste that is no longer a liquid.** *(Solid Waste Management Board; 329 IAC 11-2-38.6)*

SECTION 4. 329 IAC 11-2-43 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-2-43 "Solid waste processing facility" defined**

**Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10**

**Affected: IC 13-11-2-212; IC 13-30-2; IC 25-31; IC 36-9-30**

**Sec. 43. "Solid waste processing facility" has the meaning set forth in IC 13-11-2-212 and means a solid waste facility upon at which at least one (1) of the following is located:**

- (1) A solid waste incinerator.**
- (2) A transfer station.**
- (3) A solid waste baler.**
- (4) A solid waste shredder,**
- (5) A resource recovery system.**
- (6) A composting facility. or**
- (7) A garbage grinding facility.**
- (8) A medical or an infectious waste treatment facility.**
- (9) A solid waste solidification facility that is not located on an operating permitted landfill.**
- (10) A facility that uses plasma arc or another source of heat to treat solid waste.**

*(Solid Waste Management Board; 329 IAC 11-2-43; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 5. 329 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-3-1 Exclusions; general**

**Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1**

**Affected: IC 13-18-10; IC 13-19-3-3; IC 13-30-2; IC 36-9-30**

**Sec. 1. The following solid waste management activities are not subject to the provisions of this article:**

- (1) Disposing of only uncontaminated:**
  - (A) rocks;**
  - (B) bricks;**
  - (C) concrete;**
  - (D) road demolition waste materials; or**
  - (E) dirt.**
- (2) Land application activities regulated by 327 IAC 6.1 and 327 IAC 7.**
- (3) Confined feeding control activities regulated by IC 13-18-10.**
- (4) Wastewater discharge activities regulated by 327 IAC 5.**



(5) Processing ~~except for incineration, in which of waste when~~ the waste, other than ~~waste~~ tires, has been segregated from the general ~~municipal~~ solid waste stream ~~prior to before~~ arrival at ~~the a~~ processing ~~site~~ facility. **The facility must do the following:**

**(A) In the regular course of business, receive distinct and recognizable solid waste items that do not require substantial further processing.**

**(B) Return those items for reuse in manufacturing.**

**(C) Not have more than ten percent (10%) of the solid waste that passes through the facility ultimately taken for final disposal. This is determined by the weight of material passing through the facility in a calendar quarter.**

**This exclusion does not apply to processing of waste by incineration, solidification, or plasma arc or other heat treatment methods.**

(6) Processing, except for incineration of solid waste that takes place at the generating facility.

(7) Processing and disposal of uncontaminated and untreated natural growth solid waste, including **the following:**

**(A) Tree limbs.**

**(B) Stumps.**

**(C) Leaves. and**

**(D) Grass clippings.**

(8) Disposal of sawdust that is derived from processing untreated natural wood.

(9) The disposal of coal ash, transported by water, into an ash pond that has received a water pollution control facility construction permit under 327 IAC 3.

(10) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (9) and (11).

(11) The disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.

(12) Uses and disposal of coal waste as exempted from regulation in IC 13-19-3-3.

(13) The legitimate use of iron and steelmaking slags, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (15).

(14) The legitimate use of foundry sand ~~which that~~ has been demonstrated as suitable for restricted waste site Type III under the provisions of 329 IAC 10-9, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (15).

(15) Other uses of solid waste may be approved by the commissioner if the commissioner determines them to be legitimate uses that do not pose a threat to public health and the environment.

*(Solid Waste Management Board; 329 IAC 11-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

SECTION 6. 329 IAC 11-4-1 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 11-4-1 Applicability**

**Authority:** IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1; IC 13-19-4-10

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 1. This rule applies to solid waste processing facilities permitted under 329 IAC 1.5, which was repealed in 1989, ~~which that~~ have closed ~~prior to the effective date of this article: before April 13, 1996.~~ *(Solid Waste Management Board; 329 IAC 11-4-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 7. 329 IAC 11-5-1 IS AMENDED TO READ AS FOLLOWS:

#### **Rule 5. Application of this Article to Existing Permittees and Facilities; Transition Provisions**

#### **329 IAC 11-5-1 Applicability**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 1. (a) Unless otherwise addressed in this rule, all new and existing solid waste processing facilities must comply with applicable requirements of this article.

(b) This rule applies to ~~all~~ **the following** solid waste processing facilities:

**(1) Facilities** that have construction or operating permits in effect on ~~the effective date of~~ **April 13, 1996.**

**(2) Facilities required to be permitted under the 2006 amendments to this article.**

*(Solid Waste Management Board; 329 IAC 11-5-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 8. 329 IAC 11-5-2 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-5-2 Existing construction permits**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 2. Construction permits in effect on ~~the effective date of this article~~ **April 13, 1996**, must serve as solid waste permits under 329 IAC 11-9 ~~329 IAC 11-10; and through~~ 329 IAC 11-11. To begin operation, facilities for which only construction permits, but not operating permits, have been issued ~~prior to the effective date of this article~~ **before April 13, 1996**, must submit an application for a solid waste facility permit renewal at least ninety (90) days before expiration of the construction permit. Operation of the facility must not begin until a solid waste facility permit has been issued under this article. *(Solid Waste Management Board; 329 IAC 11-5-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 9. 329 IAC 11-5-3 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-5-3 Existing operating permits**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 3. Operating permits in effect on ~~the effective date of this article~~ **April 13, 1996**, must serve as solid waste permits under 329 IAC 11-9 ~~329 IAC 11-10; and through~~ 329 IAC 11-11 until such time as a permit renewal is either issued or denied by the commissioner under 329 IAC 11-9 ~~329 IAC 11-10; and through~~ 329 IAC 11-11, provided there is compliance with section 5(a) of this rule. *(Solid Waste Management Board; 329 IAC 11-5-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 10. 329 IAC 11-5-4 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-5-4 Operating requirements for facilities with operating permits in effect on April 13, 1996**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 4. (a) Plans and permit conditions approved ~~prior to the effective date of this article~~ **before April 13, 1996**, must continue in effect until permit renewal unless the permit is reopened for cause under 329 IAC 11-9 ~~329 IAC 11-10; and through~~ 329 IAC 11-11.

(b) Except as provided in subsection (a), the operational standards of 329 IAC 11-13 ~~329 IAC 11-14; and through~~ 329 IAC 11-15 for solid waste processing facilities must apply to solid waste processing facilities with operating permits in effect on ~~the effective date of this article~~ **April 13, 1996**. *(Solid Waste Management Board; 329 IAC 11-5-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 11. 329 IAC 11-5-6 IS ADDED TO READ AS FOLLOWS:

**329 IAC 11-5-6 Pending permit applications**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 6. A permit application that is received:

(1) before the effective date of the 2006 amendments to this article will not be required to be revised to meet the requirements of this article; however, the application must comply with this article, as effective on August 13, 2004; and

(2) on or after the effective date of the 2006 amendments to this article will be required to comply with all applicable

**requirements of this article.**

*(Solid Waste Management Board; 329 IAC 11-5-6)*

SECTION 12. 329 IAC 11-5-7 IS ADDED TO READ AS FOLLOWS:

**329 IAC 11-5-7 Existing facilities requiring a permit**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

**Sec. 7. (a) A facility described in section 1(b)(2) of this rule that is operating on the effective date of the 2006 amendments to this article must do the following:**

**(1) Notify the department within thirty (30) days after the effective date of the 2006 amendments to this article of one (1) of the following:**

**(A) A permit application will be submitted.**

**(B) The facility will cease operation within sixty (60) days.**

**(2) If the facility will continue to operate, submit a complete application as required by 329 IAC 11-9-1 and 329 IAC 11-9-2 within sixty (60) days after the effective date of the 2006 amendments to this article.**

**(b) The facility must be operated under the applicable requirements of this article until the:**

**(1) permit for the facility is effective; or**

**(2) facility ceases operation.**

*(Solid Waste Management Board; 329 IAC 11-5-7)*

SECTION 13. 329 IAC 11-9-5 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-9-5 Demonstration and determination of need**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-20-1-1; IC 13-21-5; IC 13-30-2; IC 25-31; IC 36-9-30

**Sec. 5. (a) This section applies to the following:**

**(1) All permits for new solid waste processing facilities ~~or~~ excluding transfer stations.**

**(2) Major modifications of solid waste processing facility permits, excluding transfer stations, issued after March 20, 1990. ~~except those facilities exempt under IC 13-20-1-1.~~**

**(b) In accordance with subsection (a), and in addition to other permit application requirements outlined in this rule, the following are ~~also~~ required:**

**(1) A description of the following:**

**(A) The anticipated area that would be served by the facility as indicated by the following:**

**(~~A~~) (i) Solid waste management district or districts if established.**

**(~~B~~) (ii) County, counties, or portions thereof.**

**(~~C~~) (iii) County, counties, and state if the area includes portions outside of Indiana.**

**(~~2~~) ~~A description of~~ (B) The existing solid waste management facilities that serve the same described area.**

**(~~3~~) ~~A description of~~ (C) The need that would be fulfilled by constructing the proposed facility as follows:**

**(~~A~~) (i) For facilities proposed in areas with approved district solid waste management plans, ~~a any~~ description of the need ~~that has been~~ identified in the **approved** district solid waste management plan required under IC 13-21-5.**

**(~~B~~) (ii) For facilities proposed in areas without approved district solid waste management plans ~~or when an approved district solid waste management plan does not address the need for the type of facility proposed~~, a description of the need for the proposed area to be served.**

**(~~4~~) ~~A description of~~ (D) Recycling, composting, or other activities that the facility would operate within the proposed area of service.**

**(~~5~~) (2) Additional information as requested by the commissioner.**

**(c) The commissioner shall review the submitted application and accompanying materials in accordance with this rule. If ~~it is determined the commissioner determines~~ that there is not a local or regional need in Indiana for the solid waste ~~management~~ processing facility, the commissioner shall deny the permit application. *(Solid Waste Management Board; 329 IAC 11-9-5; filed***

Mar 14, 1996, 5:00 p.m.: 19 IR 1939; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1129, eff Jan 1, 2002) NOTE: Under P.L.154-2005, SECTION 18, 329 IAC 11-9-5 is void to the extent that the rule applies to transfer stations.

SECTION 14. 329 IAC 11-11-5 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-11-5 Transferability of permits; change of ownership interest**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

**Affected:** IC 13-15-1-3; IC 13-15-7; IC 13-19-4; IC 13-30-2; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to another person by the permittee, without the need for a:

- (1) new permit; or
- (2) modification or revocation of the existing permit;

being required, if ~~(1)~~ the permittee notifies the commissioner of the proposed transfer at least sixty (60) days before the proposed date of transfer on forms provided by the commissioner.

**(b) Along with the notification form, the permittee must provide the following:**

**(1) A disclosure statement meeting the requirements of IC 13-19-4-2(1) or IC 13-19-4-2(2) executed by:**

**(A) the transferee; and**

**(B) each person who is a responsible party with respect to the transferee;**

**unless IC 13-19-4-2 does not apply under the provisions of IC 13-19-4-1(a)(2).**

**(2) A written agreement containing a specific date of transfer of permit responsibility. is submitted to the commissioner;**

**(3) Proof of financial responsibility of the transferee as provided in 329 IAC 10-39, if required by the commissioner.**

**(4) Proof that the transferee is, or will be, the owner of the facility.**

~~(3)~~ **(c) A permit may not be transferred if the transferee has: not**

**(1) been convicted under IC 13-30-6 or IC 36-9-30-35; and has not or**

**(2) had a permit to operate under this article or previous articles:**

**(A) 329 IAC 1.5, which was repealed in 1989; or**

**(B) 329 IAC 2, which was repealed in 1996;**

**revoked by the commissioner under IC 13-15-7.**

~~(4)~~ **(4) the transferee provides proof of financial responsibility as provided in 329 IAC 10-39 if required by the commissioner; and**

~~(5)~~ **(5) the transferee provides proof that it is, or will be, the owner of the facility.**

~~(b)~~ **(d) The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied under IC 13-19-4-5 through IC 13-19-4-7.**

~~(e)~~ **(e) Notwithstanding the transfer of a permit, a variance must not be transferred to another person.**

**(f) Subject to IC 13-19-4-8(a), if there is a change of at least fifty percent (50%) ownership control of an entity, but less than a change of the entire ownership control of an entity, that holds a permit described in IC 13-15-1-3, then the entity must, not later than thirty (30) days after the change of ownership control is completed, submit to the department the disclosure statement required by IC 13-19-4-3(a) and IC 13-19-4-3(b).**

**(g) The requirement of subsection (f) applies to the transfer of a permit described in IC 13-19-4-1(a)(2).**

**(h) Upon receipt of the disclosure statement required under subsection (f), the commissioner shall follow the procedures and requirements of IC 13-19-4-8(f) and, if applicable, IC 13-19-4-8(g). (Solid Waste Management Board; 329 IAC 11-11-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1130, eff Jan 1, 2002)**

SECTION 15. 329 IAC 11-13-3 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 11-13-3 Signs**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 3. For **(a)** All **solid waste processing** facilities ~~except incinerators processing waste generated on-site~~, each point of access ~~from a public road~~ must have a sign of at least sixteen (16) square feet in area identifying the **following**:

- (1) The name of the facility.**
- (2) The type of operation.**
- (3) The facility's IDEM permit number.**
- (4) The phone number for the person to be contacted in the event of an emergency.**

**(b) For facilities that grant access to the public, the following are also required:**

- (1) The sign must:**
  - (A) be posted at each point of access from a public road; and**
  - (B) identify:**
    - (i) times that a facility employee is present; and indicating**
    - (ii) the time the facility is open to accept waste.**
- (2) The schedule of fees. hours of operation; and solid waste facility permit number.**

**(c) For facilities that do not grant access to the public, the sign must be posted at the door of the facility building.** (*Solid Waste Management Board; 329 IAC 11-13-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 16. 329 IAC 11-15-1 IS AMENDED TO READ AS FOLLOWS:

### **329 IAC 11-15-1 Definitions**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-11-2; IC 13-19-3-3; IC 13-22; IC 13-30-2; IC 16-41-16-4; IC 36-9-30

Sec. 1. (a) In addition to the definitions ~~found~~ in 329 IAC 11-2 and IC 13-11-2, the definitions in this section apply throughout this rule.

~~(b) “Broker”, as defined in IC 13-11-2-19, means a person who is in the business of making arrangements for the transportation of municipal waste that was generated by another person.~~

~~(c)~~ **(b) “Manifest” means the form used for identifying the:**

- (1) quantity;**
- (2) origin;**
- (3) operators involved in a shipment; and**
- (4) destination;**

of municipal solid waste during its transportation.

~~(d) “Municipal waste”, as defined in IC 13-11-2-133, means any garbage, refuse, industrial lunchroom or office waste, and other similar material resulting from the operation of residential, municipal, commercial, or institutional establishments, and from community activities. The term does not include the following:~~

~~(1) Hazardous waste regulated under:~~

~~(A) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or~~

~~(B) the federal Solid Waste Disposal Act, 42 U.S.C. 6901 et seq. in effect on January 1, 1990.~~

~~(2) Infectious waste as defined in IC 16-41-16-4.~~

~~(3) Wastes that result from the combustion of coal and that are referred to in IC 13-19-3-3.~~

~~(4) Materials that are being transported to a facility for reprocessing or reuse. As used in this subdivision, “reprocessing or reuse” does not include either of the following:~~

~~(A) Incineration.~~

~~(B) Placement in a landfill.~~

~~(c)~~ **(c) “Operator”, as defined in IC 13-11-2-148(c), means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:**

- (1) A broker.**
- (2) A person who manages the activities of a transfer station that receives municipal waste.**

(3) A transporter.

~~(f)~~ “Solid waste processing facility”, as defined in IC 13-11-2-212, means a facility at which at least one ~~(1)~~ of the following is located:

~~(1) A solid waste incinerator.~~

~~(2) A transfer station.~~

~~(3) A solid waste baler.~~

~~(4) A solid waste shredder.~~

~~(5) A resource recovery system.~~

~~(6) A composting facility.~~

~~(7) A garbage grinding system.~~

The term does not include a facility or an operation that generates solid waste.

~~(g)~~ (d) “Transporter”, as defined in IC 13-11-2-238, means a person who is in the business of transporting municipal waste.

~~(h)~~ (e) “Waste transfer activities”, as defined in IC 13-11-2-254, means the participation by a:

(1) broker or a transporter who is:

(A) a resident of Indiana; or

(B) not a resident of Indiana; or

(2) transfer station that receives municipal waste located:

(A) inside Indiana; or

(B) outside Indiana;

in the collection or transportation of municipal waste for disposal or incineration in Indiana. (*Solid Waste Management Board; 329 IAC 11-15-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3973*)

SECTION 17. 329 IAC 11-15-3 IS AMENDED TO READ AS FOLLOWS:

### **329 IAC 11-15-3 Manifests required information**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 3. The manifest required under section 2 of this rule must include the following information:

(1) The amount in tons or pounds of municipal waste transported in the vehicle.

(2) The name and address of the solid waste processing facility from which the municipal waste is transported in the vehicle.

(3) The destination of the municipal waste.

(4) The name and business address of the transporter of the municipal waste.

~~(5) The acknowledgment numbers issued by the department under IC 13-20-6-5(2) to the transfer station, transporter, and broker listed on the manifest.~~

~~(6)~~ (5) The name and address of the broker involved in the shipment, if applicable.

~~(7)~~ (6) The date of:

(A) the shipment; and ~~the date of~~

(B) receipt at the final disposal facility.

(*Solid Waste Management Board; 329 IAC 11-15-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

SECTION 18. 329 IAC 11-15-5 IS AMENDED TO READ AS FOLLOWS:

### **329 IAC 11-15-5 Prohibition on accepting municipal waste**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-20-6-4; IC 13-30-2; IC 36-9-30

Sec. 5. (a) ~~Prior to~~ **Before** accepting a shipment of municipal waste from a transfer station located inside or outside of Indiana, a solid waste processing facility must **do the following**:

(1) Receive a copy of the manifest. ~~and must~~

(2) Review the manifest to determine whether the items listed under section 3 of this rule are included on the manifest.

(b) A solid waste processing facility must not knowingly accept a shipment of municipal waste from a transfer station located inside or outside of Indiana if **the**:

- (1) ~~the~~ municipal waste is not accompanied by a manifest that contains the information required under section 3 of this rule; or
- (2) ~~the~~ solid waste processing facility has received notice from the department that the commissioner has issued an order under ~~IC 13-20-6-3~~ or IC 13-20-6-4 that suspends the waste transfer activities within Indiana of the transfer station or operator that is listed on the manifest accompanying the shipment of municipal waste.

(c) Subsection (b)(2) does not apply unless the department has sent notice by certified mail, return receipt requested, to the solid waste processing facility that the commissioner has suspended the waste transfer activities of the transfer station or operator listed on the manifest. The notice must contain the following:

- (1) The name of the operator or transfer station subject to the commissioner's order to suspend waste transfer activities.
- (2) The date on which the waste transfer activities are suspended under the commissioner's order.
- ~~(3) The acknowledgement number issued to the operator under IC 13-20-6-5(2) if applicable.~~
- ~~(4)~~ (3) The location of the transfer station if the order applies to a transfer station.

(d) Subsection (b)(2) does not apply after the department has notified a suspended transfer station or operator that they may resume waste transfer activities in Indiana. The notice to the formerly suspended transfer station or operator must contain the date in which waste transfer activities may resume. A copy of this notice must be sent by the department via certified mail, return receipt requested, to each solid waste processing facility that was sent the applicable notice under subsection (c). (*Solid Waste Management Board; 329 IAC 11-15-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

### **Notice of First Meeting/Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on July 18, 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 amendments to rules at 329 IAC 11.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. 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 Lou McFadden, Rules Development Section, Office of Land Quality, (317) 232-8922 or (800) 451-6027 (in Indiana).*

*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) 233-6565 (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, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.*