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TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Proposed Rule LSA Document #06-125

DIGEST

Adds 318 IAC concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance in accordance with IC 13-14-1-15. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Background:

The Indiana Department of Environmental Management (Department) is authorized to adopt the proposed rules under IC 13-14-1-15, added by Public Law 192-2005 (SEA 444, SECTION 6). Under that section, the Department is required to create and maintain a list of persons who are qualified to inspect and clean property that is polluted by a contaminant. That Act added chemicals used in the illegal manufacture of controlled substances, immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances to the definition of contaminants. That Act also required the Department to adopt rules to establish qualifications for persons qualified to inspect and clean contaminated properties and to set standards for cleaning these properties.

Estimated number of small businesses subject to the proposed rule:

Small businesses affected by this rule are generally identified by the following NAICS codes:

- 23594 Wrecking and Demolition Contractors. In 2002, there were 29 establishments in NAICS Code 23594 with fewer than 100 employees in Indiana. The Department estimates that no more than 12 entities in NAICS Code 23594 will apply for listing under this rule. The Department assumes that all of these entities are small businesses.
- 5311 Lessors of Real Estate, including 53111 Lessors of Residential Buildings and Dwellings, 53112 Lessors of Nonresidential Buildings (except Miniwarehouses), 53113 Lessors of Miniwarehouses and Self-Storage Units, and 53119 Lessors of Other Real Estate Property. In 2002, there were 1,778 establishments in NAICS Code 5311 with fewer than 100 employees in Indiana. The Department estimates that about 113 of these entities will be affected annually by this rule. It is reasonable to assume that all of these entities are small businesses.
- 562111 Solid Waste Collection. In 2002, there were 114 establishments in NAICS 562111 with fewer than 100 employees in Indiana. Because this rule does not require contaminated properties owned by these entities to be cleaned, the Department estimates that none will be affected by this rule.
- 56291 Remediation Services. In 2002, there were 51 establishments in NAICS Code 56291 with fewer than 100 employees in Indiana. The Department estimates that approximately 12 entities in NAICS Code 56291 will apply for listing under this rule. It is not possible to determine at this time how many will be small businesses.
- 72111 Hotels (except casino hotels) and Motels. In 2002, there were 762 establishments in NAICS Code 72111 with fewer than 100 employees in Indiana. The Department estimates that about 18 of these establishments will be affected annually by this rule. The Department estimates that 17 of these entities will be small businesses.
- Other small businesses that may be affected as property owners may be farms and other property owners with open land or vacant structures. Because the occurrence rate of illegal drug labs is very low, a very small percentage of these entities would be affected. It is not possible to determine at this time how many will be small businesses.
- A number of construction contractors in NAICS codes 233 and 235 that are small businesses may be affected by the requirement to comply with 29 CFR 1910.120(e) if they reconstruct contaminated properties. There is no way of estimating at this time how many of these entities would engage in reconstructing contaminated properties and be affected by or benefit from this proposed rule. It is not possible to determine at this time how many will be small businesses.

Estimated average annual reporting, record keeping, and other administrative costs:

Following cleanup of a contaminated property, the proposed rule would require a qualified inspector to provide the owner of the contaminated property with a certificate of decontamination and to provide copies to the local health department and the State Department of Health. The owner of a contaminated property could remove contaminated materials from a structure but would be required to obtain a certificate of decontamination for that property. A demolition contractor would be required to provide the

property owner and the local and state health departments with a written notice that demolition has been completed. The qualified inspector would have to retain laboratory records for five years or transfer them to the local or state health department. The Department has no way to meaningfully estimate these administrative costs at this time.

Estimated total economic impact of compliance with the proposed rule:

Because the Department cannot predict the choices property owners may make in the future, the economic impact of this rulemaking cannot be meaningfully quantified at this time. Compliance with this rule will be a significant cost to property owners affected by this rule. At the same time, compliance with this rule would allow remediation contractors, wrecking contractors, and other contractors to receive payment for services performed under this rule. The Department expects the costs to property owners to roughly balance the benefits to contractors who clean up these properties.

Statement justifying the imposition of the costs and requirements:

IC 13-14-1-15 requires the Department to establish a list of persons qualified to inspect and clean contaminated properties. That law also requires the Department to adopt rules for cleanup and standards for listing.

Regulatory flexibility analysis of less intrusive, less costly or alternative methods:

The proposed rule includes alternatives that will allow an individual property owner to select the most cost-effective cleanup option for that owner's individual situation. The rule includes only the minimum requirements that will allow a remediation contractor to protect human health while cleaning up a property, complying with federal requirements, and disposing of resulting waste in compliance with Indiana law.

318 IAC

SECTION 1. 318 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ARTICLE 1. INSPECTION AND CLEANUP OF PROPERTY CONTAMINATED WITH CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

Rule 1. General

318 IAC 1-1-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15

Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 1. This article applies to the following:

- (1) The owner of a contaminated property as defined in 318 IAC 1-2-14.**
- (2) A person who applies to be listed or who is listed by the department as qualified to inspect and clean up contaminated property.**
- (3) A person who cleans up contaminated property under this article.**
- (4) A county that takes possession of a contaminated property in accordance with IC 6-1.1-25-4.1**

(Department of Environmental Management; 318 IAC 1-1-1)

Rule 2. Definitions

318 IAC 1-2-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11; IC 13-14-1-15

Sec. 1. The definitions in IC 13-11 and this rule apply throughout this article. *(Department of Environmental Management; 318 IAC 1-2-1)*

318 IAC 1-2-2 "Certification" or "certify" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. "Certification" or "certify" means the act of stating the facts about the inspection of a contaminated property under

318 IAC 1-5 and stating in writing that the facts are true and accurate. *(Department of Environmental Management; 318 IAC 1-2-2)*

318 IAC 1-2-3 “Chemicals used in the illegal manufacture of a controlled substance” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 35-48-1-9; IC 35-48-1-17; IC 35-48-4-14.5

Sec. 3. “Chemicals used in the illegal manufacture of a controlled substance” means all substances used in or resulting from the illegal manufacture of controlled substances including the following:

- (1) Contaminants as defined in IC 13-11-2-42.**
- (2) Controlled substances as defined in IC 35-48-1-9.**
- (3) Immediate precursors as defined in IC 35-48-1-17.**
- (4) Chemical reagents and precursors as defined in IC 35-48-4-14.5.**

(Department of Environmental Management; 318 IAC 1-2-3)

318 IAC 1-2-4 “Cleanup” or “clean up” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 9-22; IC 13-14-1-15

Sec. 4. (a) “Cleanup” or “clean up” means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.**
- (2) Demolition of the structure under 318 IAC 1-6.**

(b) The term refers to actions taken after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents.

(c) In the case of a vehicle, the term means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.**
- (2) Disposal under IC 9-22.**

(Department of Environmental Management; 318 IAC 1-2-4)

318 IAC 1-2-5 “Commissioner” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. “Commissioner” means the commissioner of the department. *(Department of Environmental Management; 318 IAC 1-2-5)*

318 IAC 1-2-6 “Contaminated property” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 5-2-15; IC 10-11-8-2; IC 13-11-2-42; IC 13-14-1-15; IC 36-7-9

Sec. 6. (a) “Contaminated property” means real property or a vehicle that meets any of the following criteria:

- (1) The property or vehicle:**
 - (A) has been identified by a law enforcement agency as having been used for the illegal manufacture of a controlled substance; and**
 - (B) is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.**
- (2) The law enforcement agency that terminates the operation of a methamphetamine laboratory has reported the existence of an operational laboratory at that property on the “Indiana State Police Methamphetamine Laboratory Occurrence Report” form in accordance with IC 5-2-15.**

(b) For an apartment building, multifamily dwelling, condominium, hotel, or motel, the term is limited to the unit that was identified by the law enforcement agency as having been used for the illegal manufacture of a controlled substance if all of the following are true:

- (1) The entry to the unit is located on the:**

(A) outside of the structure; or

(B) interior of the structure and is closed by a door assembly that meets the requirements of the 2003 Indiana Building Code at 675 IAC 13-2.4.

(2) The unit has no opening to another unit or space. However, if the unit connects to another unit or space, the contaminated property includes all connecting units or spaces.

(3) The heating, ventilating, and air conditioning system for that unit is enclosed within that unit and is separate from the heating, ventilating, and air conditioning system of any other unit, except for:

(A) a hot water boiler that serves more than one (1) unit in the structure; or

(B) an air conditioning condenser located outside the structure.

(c) The property is not a contaminated property if the law enforcement agency that identifies the property as having been used for the illegal manufacture of a controlled substance determines that:

(1) the process used to manufacture the controlled substance has not been started;

(2) all chemicals to be used to manufacture the controlled substance have been removed; and

(3) no contamination related to the illegal manufacture of a controlled substance is present.

(d) The term includes any areas outside a structure that were used for the disposal of chemicals used in the illegal manufacture of a controlled substance.

(e) A property is no longer a contaminated property when the certificate of decontamination for that property is issued.

(Department of Environmental Management; 318 IAC 1-2-6)

318 IAC 1-2-7 “Contamination” or “contaminant” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 13-14-1-15

Sec. 7. “Contamination” or “contaminant” has the meaning set forth at IC 13-11-2-42. *(Department of Environmental Management; 318 IAC 1-2-7)*

318 IAC 1-2-8 “Decontaminate” or “decontamination” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 8. “Decontaminate” or “decontamination” means removal of chemicals used in the illegal manufacture of a controlled substance from a contaminated property that occur after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents. *(Department of Environmental Management; 318 IAC 1-2-8)*

318 IAC 1-2-9 “Department” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-13-1; IC 35-48-1-9

Sec. 9. “Department” means the department of environmental management established under IC 13-13-1. *(Department of Environmental Management; 318 IAC 1-2-9)*

318 IAC 1-2-10 “Illegally manufactured controlled substance” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-9

Sec. 10. “Illegally manufactured controlled substance” means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured. *(Department of Environmental Management; 318 IAC 1-2-10)*

318 IAC 1-2-11 “Inspect” or “inspection” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 11. (a) “Inspect” or “inspection” means the activities conducted to confirm that the property meets the decontamination levels in 318 IAC 1-5-2, Table 1, or to confirm that decontamination is not required. These activities are regulated by 318 IAC 1-5 and include the following:

- (1) Sampling.**
- (2) Analysis by an independent laboratory.**
- (3) Reporting of laboratory results.**

(b) The term does not include activities of any of the following:

- (1) State and local law enforcement agencies.**
- (2) Hazardous materials responders.**
- (3) Local health departments.**

(Department of Environmental Management; 318 IAC 1-2-11)

318 IAC 1-2-12 “Law enforcement agency” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 10-11-8-2; IC 35-48-1-18

Sec. 12. “Law enforcement agency” has the meaning set forth in IC 10-11-8-2. *(Department of Environmental Management; 318 IAC 1-2-12)*

318 IAC 1-2-13 “Manufacture” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 13. “Manufacture” has the meaning set forth in IC 35-48-1-18. *(Department of Environmental Management; 318 IAC 1-2-13)*

318 IAC 1-2-14 “Owner of the contaminated property” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 14. “Owner of the contaminated property” means either of the following:

- (1) A person having an ownership interest in the contaminated property.**
- (2) An agent of a person having an ownership interest in the contaminated property.**

(Department of Environmental Management; 318 IAC 1-2-14)

318 IAC 1-2-15 “Person” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158

Sec. 15. “Person” has the meaning set forth at IC 13-11-2-158(a). *(Department of Environmental Management; 318 IAC 1-2-15)*

318 IAC 1-2-16 “Qualified inspector” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158

Sec. 16. “Qualified inspector” means a person who has been placed on the qualified inspector list. *(Department of Environmental Management; 318 IAC 1-2-16)*

318 IAC 1-2-17 “Qualified inspector list” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158; IC 13-14-1-15

Sec. 17. “Qualified inspector list” means the list of persons that the department has determined to be qualified to carry out the duties described in 318 IAC 1-5-1 for qualified inspectors. *(Department of Environmental Management; 318 IAC 1-2-17)*

Rule 3. Responsibilities of the Owner of Contaminated Property

318 IAC 1-3-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 1. (a) This rule applies to the owner of any of the following properties that meet the definition of a contaminated property:

- (1) Single or multiple family residences.
- (2) Hotels or motels.
- (3) Businesses.
- (4) Vehicles.
- (5) Rental storage units.
- (6) Outbuildings that are accessible to children.
- (7) Buildings used for storage that are accessible to children.
- (8) Any other property that contains equipment and containers of chemicals used for illegal manufacture of a controlled substance.

(b) This rule does not apply to any of the following if all equipment and containers of chemicals used for illegal manufacture of a controlled substance have been removed:

- (1) Outbuildings that are not accessible to children.
- (2) Buildings used for storage that are not accessible to children.
- (3) Waste collection containers.
- (4) Open land where no structure is contaminated.

(Department of Environmental Management; 318 IAC 1-3-1)

318 IAC 1-3-2 Cleanup required

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 2. If the initial assessment of the property shows that contamination may exceed the final decontamination levels listed in 318 IAC 1-5-2, Table 1, then the owner of the contaminated property shall clean up the contaminated property as required by this article before:

- (1) continuing to occupy or use the property;
- (2) reoccupying or reusing the property;
- (3) allowing the property to be reoccupied or reused; or
- (4) transferring any interest in the property to another person.

(Department of Environmental Management; 318 IAC 1-3-2)

318 IAC 1-3-3 Qualified inspector required for decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. The owner of contaminated property who has that property decontaminated shall retain a qualified inspector from the list of qualified inspectors to carry out all duties listed in 318 IAC 1-5-1. *(Department of Environmental Management; 318 IAC 1-3-3)*

318 IAC 1-3-4 Contaminated property in the possession of a county

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 4. (a) A county may take possession of a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule, unless that property is, or will be, occupied while in the possession of the county.

(b) A county may transfer a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule

if the county notifies the person who receives the tax deed to the property that the property is a contaminated property. The person who receives the tax deed to a contaminated property under IC 6-1.1-25-4.1 must comply with this rule. *(Department of Environmental Management; 318 IAC 1-3-4)*

318 IAC 1-3-5 Decontamination by the owner of the contaminated property

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. (a) The owner of a contaminated property shall not decontaminate property controlled by that person unless the decontamination is done under the supervision of a qualified inspector.

(b) The owner of a contaminated property shall not issue a certificate of decontamination under 318 IAC 1-5-9 for property owned or controlled by that person. *(Department of Environmental Management; 318 IAC 1-3-5)*

Rule 4. Listing by the Department as a Qualified Inspector

318 IAC 1-4-1 Who must be listed as a qualified inspector

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. (a) A person who performs any of the activities listed in 318 IAC 1-5-1 at a contaminated property must be listed on the qualified inspector list.

(b) A person who:

(1) is not a supervisor; and

(2) decontaminates a contaminated property under the supervision of a qualified inspector;

is not required to be listed on the qualified inspector list but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. 29 CFR 1910.120 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. *(Department of Environmental Management; 318 IAC 1-4-1)*

318 IAC 1-4-2 Criteria for listing

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. (a) A person who applies to be listed as a qualified inspector must meet all of the criteria in this section.

(b) Each person who applies to be listed as a qualified inspector shall have accumulated at least forty (40) hours of experience doing any of the following:

(1) Decontaminating contaminated properties.

(2) Emergency response operations, cleanup or remediation operations, corrective actions, or operations involving hazardous wastes that are regulated under 29 CFR 1910.120, revised as of July 1, 2005.

(c) Each person who applies to be listed as a qualified inspector shall have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005.

(d) Each person who applies to be listed as a qualified inspector shall have done all of the following:

(1) Received training on decontamination and inspection of contaminated property provided by the department.

(2) Passed an examination on the subject matter of the training provided by the department with a score of at least eighty percent (80%).

(e) To remain on the qualified inspector list, each qualified inspector shall receive all of the following refresher training:

(1) Eight (8) hour annual refresher training that meets the requirements of 29 CFR 1910.120(e)(8), revised as of July 1, 2005.

(2) Biennial refresher training provided by the department.

(f) Each qualified inspector shall maintain the following insurance:

- (1) Professional liability insurance in the amount of at least one million dollars (\$1,000,000).
- (2) Errors and omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

(g) A person who decontaminates property under this article shall maintain pollution prevention insurance in the amount of at least three million dollars (\$3,000,000). *(Department of Environmental Management; 318 IAC 1-4-2)*

318 IAC 1-4-3 Application to be listed on the qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. (a) A person who wishes to be listed on the qualified inspector list must apply to the department in writing. The application may be in any form but must include all of the following information:

- (1) Full name, address, telephone, and electronic mail contact information.
- (2) Copies of documents showing the applicant meets all applicable criteria in this rule.
- (3) Complete information showing how the person should be described on the qualified inspector list.

(b) Mail or deliver the application to the Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251. *(Department of Environmental Management; 318 IAC 1-4-3)*

318 IAC 1-4-4 Qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 4. (a) The department will maintain a current list of all persons who have been found by the department to be qualified to inspect and clean contaminated properties.

(b) The purpose of the qualified inspector list is to allow owners of contaminated properties, local health departments, and other persons to:

- (1) locate qualified inspectors; and
- (2) verify that a person is qualified to inspect and clean contaminated properties.

(c) Listing of a person on the qualified inspector list does not convey a property right.

(d) The qualified inspector list will be available to the public as follows:

- (1) In person or by mail at Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.
- (2) By telephone at (317) 232-4535 or toll-free at (800) 451-6027 in Indiana.
- (3) Electronically on the department's Web site at <http://www.in.gov/idem/land/>.

(e) The department will review each application for completeness. When the person or persons identified in the application have demonstrated that all criteria of this rule have been met, the department will place that person or persons on the qualified inspector list.

(f) The department will remove a person from the qualified inspector list who submits a written request for removal from the list to the address in section 3(b) of this rule.

(g) The department may remove a person from the qualified inspector list if the person demonstrates a failure to meet the requirements of this article.

(h) The department may return a person to the qualified inspector list when the condition that caused the department to remove that person from the list has been corrected. *(Department of Environmental Management; 318 IAC 1-4-4)*

318 IAC 1-4-5 Decontamination by a person not listed on the qualified inspector list prohibited

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. (a) A person who is not listed by the department on the qualified inspector list shall not:

- (1) supervise decontamination of a contaminated property;
- (2) inspect a contaminated property;
- (3) issue a certificate of decontamination; or
- (4) advertise to decontaminate contaminated properties.

(b) A certificate of decontamination issued by a person who is not listed by the department on the qualified inspector list is not valid to certify decontamination of a contaminated property. *(Department of Environmental Management; 318 IAC 1-4-5)*

Rule 5. Inspection and Decontamination of Contaminated Property

318 IAC 1-5-1 Duties of a qualified inspector

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. A qualified inspector shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 relevant to that property.
- (2) Consult with the law enforcement agency that terminated the laboratory and the local health department to determine the types of contamination that may reasonably be expected to be present.
- (3) Conduct an initial assessment of the contaminated property to determine the following:

(A) The types and levels of contamination present, including contamination in the septic system or sewage disposal system.

(B) The scope and extent of the decontamination, if any, that will be required to achieve the final decontamination levels listed in Table 1 of section 2 of this rule.

This assessment must cover the entire contaminated property and areas outside a structure that may have been used for disposal of chemicals used in the illegal manufacture of a controlled substance.

- (4) Notify both of the following in writing that decontamination will be conducted at that location and the date that decontamination will begin:

(A) The local health department.

(B) Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

- (5) Supervise decontamination of the property, including the septic system and sewage disposal system.
- (6) Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system.
- (7) Follow the procedure in section 3 of this rule if contamination is found outside the structure.
- (8) Inspect the contaminated property in accordance with this rule:

(A) when decontamination is complete; or

(B) if the initial assessment required by subdivision (3) shows that decontamination is not required;

to determine that the levels of contamination are below the levels listed in Table 1 of section 2 of this rule.

- (9) When the levels of contamination have been determined to be below the levels listed in Table 1 of section 2 of this rule, certify in accordance with section 9 of this rule that:

(A) the property has been decontaminated; and

(B) the levels of chemicals used in the illegal manufacture of a controlled substance that were found at the property are below the decontamination levels listed in Table 1 of section 2 of this rule.

- (10) Comply with 29 CFR 1910.120, revised as of July 1, 2005, during all decontamination operations.

- (11) Dispose or arrange for disposal of wastes resulting from decontamination in accordance with the following:

(A) 329 IAC 3.1 for wastes that are hazardous wastes as defined in 40 CFR 261.3, as incorporated by reference in 329 IAC 3.1-6-1.

(B) 327 IAC 7.1 for wastewater from a septic system.

(C) 329 IAC 10 for all other wastes resulting from decontamination.

(Department of Environmental Management; 318 IAC 1-5-1)

318 IAC 1-5-2 Inspection of contaminated property following decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. (a) Before issuing a certificate of decontamination, the qualified inspector shall inspect the contaminated property for the chemicals listed in Table 1 that are determined to be present during the review of law enforcement reports and assessment required by section 1(1) through 1(3) of this rule.

(b) The qualified inspector shall use the sampling procedures in this rule.

(c) Analysis for the contaminants listed in Table 1 must use:

(1) Method 8270C, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectroscopy", (Method 8270C), from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I, II, IIA, IIB, III, IIIA, and IIIB (SW-846), available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238; or

(2) an equivalent method acceptable to the commissioner.

(d) The qualified inspector shall determine if the levels of chemicals listed in Table 1 are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Final Decontamination Level
Methamphetamine	0.1 µg/100 cm ²
Ephedrine	0.1 µg/100 cm ²
Pseudoephedrine	0.1 µg/100 cm ²
Lysergic acid diethylamide (LSD)	0.1 µg/100 cm ²
3,4-methylenedioxy-methamphetamine (MDMA) (Ecstasy)	0.1 µg/100 cm ²
Phencyclidine (PCP)	0.1 µg/100 cm ²
Gamma hydroxybutyrate (GHB)	0.1 µg/100 cm ²

(e) All sample analysis must be conducted by an independent laboratory. *(Department of Environmental Management; 318 IAC 1-5-2)*

318 IAC 1-5-3 Contamination outside a contaminated structure

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. If the assessment required by section 1(3) of this rule indicates that contamination exists outside the contaminated structure, the qualified inspector shall:

(1) remove all contaminated material, including soil;

(2) dispose of all contaminated material and soil in accordance with 329 IAC 10; and

(3) document removal in the certificate of decontamination issued under section 9 of this rule.

(Department of Environmental Management; 318 IAC 1-5-3)

318 IAC 1-5-4 Removal in lieu of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 4. (a) Instead of having the property decontaminated to meet the decontamination levels in Table 1 of section 2 of this rule, the owner of the contaminated property may remove all potentially contaminated material from the interior of the structure or dwelling unit identified as a contaminated property.

(b) The owner of the contaminated property who removes contaminated materials in lieu of decontamination shall remove all of the following from the contaminated property:

- (1) All contents of the structure or dwelling unit and all personal property.
- (2) All plaster and lath, wallboard, and paneling covering all walls and ceilings.
- (3) All floor covering. However, the subflooring may be left in place and sealed if there is no visible contamination present.
- (4) All cabinets, shelves, and closet fixtures.
- (5) All interior doors, baseboards, and moldings.
- (6) All appliances.
- (7) All plumbing and electrical fixtures except as provided in subsection (c).
- (8) Window air conditioners.
- (9) Any remaining equipment or materials used in or resulting from the illegal manufacture of a controlled substance.

(c) The following may remain in the structure or dwelling unit if they are thoroughly washed with solvent and then washed again with detergent and water:

- (1) Exterior window assemblies.
- (2) Exterior doors.
- (3) Plumbing and electrical systems and light fixtures that are not enclosed in walls and ceilings.
- (4) Recessed light fixtures.
- (5) Ceramic or porcelain plumbing fixtures.
- (6) Heating, ventilating, and air conditioning appliances except window air conditioners.

(d) Heating, ventilating, and air conditioning ductwork may remain in the structure if:

- (1) it has been decontaminated; and
- (2) a qualified inspector has inspected the ductwork in accordance with this rule.

(e) Insulation in exterior walls may remain in place if it is covered with a vapor barrier.

(f) Plumbing and electrical systems enclosed in walls and ceilings may remain in place without cleaning.

(g) Inspection of rooms or spaces where removal was done is not required if the removal was done in accordance with this section.

(h) The qualified inspector shall document removal of contaminated material under this section in the certificate of decontamination. *(Department of Environmental Management; 318 IAC 1-5-4)*

318 IAC 1-5-5 Preparation for sampling

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-104; IC 13-14-1-15

Sec. 5. The qualified inspector shall ensure that all of the following have been removed from the contaminated property before sampling:

- (1) Carpeting and other floor covering.
- (2) Drapery.
- (3) Furniture.
- (4) Clothing.
- (5) Paper and textiles.
- (6) Food.
- (7) Other household goods.
- (8) Household hazardous waste as defined in IC 13-11-2-104.

(Department of Environmental Management; 318 IAC 1-5-5)

318 IAC 1-5-6 Number and location of required samples

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 6. (a) Each room and space in the contaminated property shall be sampled. Except as provided in subsection (g), the qualified inspector shall collect all of the samples required by this section in accordance with ASTM D 6661-01, "Standard

Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Sampling” (ASTM D 6661-01) or another equivalent method acceptable to the commissioner.

(b) In each room within the contaminated property, four (4) ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following locations:

- (1) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the floor.**
 - (2) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the ceiling.**
 - (3) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of each of two (2) walls.**
- These four (4) wipes may be combined into one (1) sample for every room.**

(c) In addition to the room samples required by subsection (b), if the contaminated property includes a kitchen, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following:

- (1) Countertop**
- (2) Sink.**
- (3) Stovetop.**
- (4) Floor in front of the stovetop.**

If the stove or cook top has been removed, a sample shall be collected from the vent hood or, if there is no vent hood, from a cabinet in the immediate vicinity of the stove or cook top. The four (4) wipes from the kitchen may be combined into one (1) kitchen sample. Wipes from newly replaced appliances shall not be included in the sample.

(d) In addition to the room samples required by subsection (b), if the contaminated property includes a bathroom, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following in each bathroom:

- (1) Countertop.**
- (2) Sink.**
- (3) Toilet.**
- (4) Shower or bathtub.**

The four (4) wipes from each bathroom may be combined into one (1) bathroom fixture sample for each bathroom. Wipes from newly replaced fixtures shall not be included in the sample.

(e) In addition to the room samples required by subsection (b), four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled at four (4) different locations in the ventilation system. These four (4) wipes may be combined into one (1) sample.

(f) If the contaminated property contains any cleaned appliances, one (1) ten (10) centimeter by ten (10) centimeter area for a total of one hundred (100) square centimeters shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, up to four (4) wipes may be combined into one (1) appliance sample for a total of four hundred (400) square centimeters per sample.

(g) If highly textured, coarse, or porous materials, such as concrete, brick, cloth, wood, or textured ceiling paint, are present on ceilings, walls, or floors after decontamination, those surfaces shall be:

- (1) removed;**
- (2) sampled using the vacuum sampling method in ASTM D 5756-02, “Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration” (ASTM D 5756-02) or another equivalent method acceptable to the commissioner; or**
- (3) sampled by removing a one hundred (100) square centimeter sample and analyzing the sample in accordance with Method 8270C or another equivalent method acceptable to the commissioner.**

(h) In addition to the samples required by subsections (b) through (g), all quality control samples required by ASTM D 6661-01, ASTM D 5756-02, Method 8270C, or an equivalent method acceptable to the commissioner shall be obtained.

(i) The qualified inspector shall preserve and handle all samples in accordance with Method 8270C or another equivalent method acceptable to the commissioner.

(j) ASTM methods are available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. *(Department of Environmental Management; 318 IAC 1-5-6)*

318 IAC 1-5-7 Laboratory analytical procedures

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 7. The qualified inspector shall ensure that the laboratory that analyzes the samples uses Method 8270C, or another equivalent method acceptable to the commissioner, for all analysis. *(Department of Environmental Management; 318 IAC 1-5-7)*

318 IAC 1-5-8 Laboratory reports

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 8. The qualified inspector shall:

(1) obtain from the analytical laboratory all reports and data required by:

(A) Method 8270C and SW-846, Chapter One; or

(B) the equivalent method used; and

(2) retain those reports as required by section 11 of this rule.

(Department of Environmental Management; 318 IAC 1-5-8)

318 IAC 1-5-9 Certificate of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 9. (a) When the final decontamination levels listed in Table 1 of section 2 of this rule have been met, the qualified inspector shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be:

(1) on the form provided by the commissioner; and

(2) signed by the qualified inspector.

(b) Within five (5) days of receiving the reports and data from the analytical laboratory, the qualified inspector shall provide the following:

(1) The original certificate of decontamination to the owner of the contaminated property.

(2) A copy of the certificate of decontamination to all of the following:

(A) The local health department.

(B) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(C) Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

(Department of Environmental Management; 318 IAC 1-5-9)

318 IAC 1-5-10 Third party validation

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 10. Nothing in this article may be construed to prohibit independent third party validation of any records and analytical data relevant to the contaminated property. *(Department of Environmental Management; 318 IAC 1-5-10)*

318 IAC 1-5-11 Record retention

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 11. The person who signs the certificate of decontamination shall make the following records and documents relevant to decontaminations and inspections performed by that person available upon request to the owner of the contaminated

property, the department, the local health department, and the state department of health for a period of at least five (5) years after the certificate of decontamination has been issued:

- (1) A copy of the certificate of decontamination.
- (2) All data and reports received from the laboratory that analyzes the post-decontamination samples relevant to the property.
- (3) Copies of relevant laboratory records described in Chapter One of SW-846.

(Department of Environmental Management; 318 IAC 1-5-11)

Rule 6. Demolition

318 IAC 1-6-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. A person who demolishes a contaminated property that is a structure or a dwelling unit shall comply with all requirements of this rule. *(Department of Environmental Management; 318 IAC 1-6-1)*

318 IAC 1-6-2 Duties of a demolition contractor

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. The demolition contractor shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 for that property.
- (2) Perform a visual inspection of the contaminated property to identify safety and health hazards at the property that can affect the health of persons at or near the property.
- (3) Notify the local health department of the following:
 - (A) That demolition will be conducted at that location.
 - (B) The date that demolition will begin.
- (4) Remove the septic tank or ensure the septic tank has been emptied. Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance.
- (5) Protect all persons at the contaminated property from hazards identified at that property, including respiratory protection if needed.
- (6) Dispose of all materials resulting from activities under this rule in accordance with 329 IAC 10.

(Department of Environmental Management; 318 IAC 1-6-2)

318 IAC 1-6-3 Notice that demolition has been completed

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. Not more than five (5) days after completing demolition, the demolition contractor shall notify the following in writing that demolition has been completed:

- (1) The local health department.
- (2) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(Department of Environmental Management; 318 IAC 1-6-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Department of Environmental Management will hold a public hearing on proposed new rules at 318 IAC concerning inspection and cleaning of properties contaminated with chemicals used in the illegal manufacture of a controlled substance.

The purpose of this hearing is to receive comments from the public prior to adoption of these rules by the department. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules.

Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonier in the 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. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333 (TDD). Please provide a minimum of 72 hours' notification.

IC 4-22-2-24(d)(3) Statement Concerning Requirements or Costs Not Expressly Required by Statute: All requirements and costs imposed by this rulemaking are required by IC 13-14-1-15. The requirements imposed under this rulemaking are the minimum necessary to effectively implement IC 13-14-1-15. This rulemaking provides alternatives that will allow regulated entities to select the appropriate and cost effective way to comply with the rule.

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.

Thomas W. Easterly
Commissioner
Department of Environmental Management