
TITLE 329 SOLID WASTE MANAGEMENT DIVISION**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #18-481**HAZARDOUS WASTE UPDATES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to the hazardous waste rules at [329 IAC 3.1](#). The amendments include the incorporation by reference of recent United States Environmental Protection Agency (U.S. EPA) rules for hazardous waste generator improvements and import-export of hazardous waste, and technical amendments and corrections to existing hazardous waste requirements. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 3.1-1-7](#); [329 IAC 3.1-1-9](#); [329 IAC 3.1-1-10](#); [329 IAC 3.1-1-14.1](#); [329 IAC 3.1-4-24](#); [329 IAC 3.1-4-25.1](#); [329 IAC 3.1-5-1](#); [329 IAC 3.1-5-4](#); [329 IAC 3.1-5-8](#); [329 IAC 3.1-6-1](#); [329 IAC 3.1-6-3](#); [329 IAC 3.1-6-5](#); [329 IAC 3.1-7-1](#); [329 IAC 3.1-7-2](#); [329 IAC 3.1-7-14](#); [329 IAC 3.1-7-16](#); [329 IAC 3.1-8-1](#); [329 IAC 3.1-9-1](#); [329 IAC 3.1-9-2](#); [329 IAC 3.1-10-1](#); [329 IAC 3.1-10-2](#); [329 IAC 3.1-11-2](#).

AUTHORITY: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-2](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the second notice of public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

In accordance with 42 U.S.C. 6926, U.S. EPA granted IDEM the authority to administer and enforce a hazardous waste program in Indiana. To maintain authorization for this program, IDEM must comply with the requirements for state authorization in 40 CFR 271, Subpart A. Activities related to administration of the hazardous waste program include permitting, compliance, monitoring, enforcement, and providing technical assistance.

In accordance with the requirements for state authorization, Indiana is required to revise its hazardous waste program by adopting recent amendments to federal hazardous waste rules. Indiana's hazardous waste rules must be at least as stringent as the rules promulgated by U.S. EPA, with the option of adopting more stringent state requirements, if appropriate for a particular situation. When U.S. EPA promulgates a final rule that is less stringent than the previous requirements, Indiana may maintain more stringent requirements or adopt the less stringent requirements to maintain consistency with U.S. EPA hazardous waste rules and potentially offer cost savings and regulatory flexibility for regulated entities.

For this rulemaking, IDEM is using the abbreviated rulemaking process authorized in [IC 13-14-9-7](#) because the rulemaking proposes the incorporation by reference of recent U.S. EPA final rules that amend hazardous waste requirements and does not include any amendments that will have a substantive effect on the scope or application of the federal rule. IDEM also is proposing to adopt the amendments in U.S. EPA final rules to maintain equivalent and consistent requirements for IDEM's authorized hazardous waste program. In addition, the rulemaking contains technical corrections and clarifications that will not have an effect on the application of existing rules. For these reasons, IDEM has determined that the available policy alternatives are limited and the first comment period required under [IC 13-14-9-3](#) will not provide substantial benefit to the environment or the

persons to be regulated or otherwise affected by the rulemaking.

Updates to the hazardous waste rules in this rulemaking include the following:

- Improvements to the hazardous waste generator requirements, promulgated by U.S. EPA in a final rule published on November 28, 2016, at 81 FR 85732. The requirements included in this final rule are a mix of less stringent, more stringent, and neither more nor less stringent requirements. The generator improvements are intended to clarify existing requirements, increase compliance flexibility, improve environmental protection, reorganize the requirements to make them easier to follow, and make technical corrections. IDEM is proposing to incorporate by reference all of the requirements to maintain equivalency and consistency with the federal hazardous waste requirements.
- Revisions to the requirements for the import-export of hazardous waste, promulgated by U.S. EPA in final rules published on November 28, 2016, at 81 FR 85696, and on December 26, 2017, at 82 FR 60894. IDEM is proposing to incorporate by reference these requirements to maintain equivalency and consistency with the federal hazardous waste requirements. However, U.S. EPA administers these requirements because they are matters of international transboundary shipments of hazardous waste, which are managed by the federal government rather than state government agencies. IDEM is proposing to incorporate these requirements because the requirements are applicable to regulated entities in Indiana and adoption ensures that regulated entities are aware that they are subject to the requirements, regardless of the enforcement authority. Because IDEM will not administer and enforce these requirements, federal and international references and terms are not replaced with state terminology in several locations.
- Revisions to the requirements for the hazardous waste electronic manifest system that establishes the methodology to determine and revise the user fees for the system and the anticipated operation date of the system, promulgated by U.S. EPA on January 3, 2018, at 83 FR 420. This U.S. EPA final rule is a follow-up to the Hazardous Waste Electronic Manifest System One Year Rule that was promulgated on February 7, 2014, and adopted in LSA Document #16-93. IDEM is proposing to incorporate by reference these requirements to maintain equivalency and consistency with the federal hazardous waste requirements. However, certain provisions of the electronic manifest requirements at 40 CFR 264, Subpart FF and 40 CFR 265, Subpart FF are not delegable to authorized states and IDEM is proposing to not adopt those particular requirements.
- Various amendments throughout [329 IAC 3.1](#) to correct the exceptions, additions, deletions, and substitutions to the CFR. The recent U.S. EPA final rules for import-export provisions and generator improvements reorganized, added, and repealed some requirements in the CFR. IDEM needs to correct the cited CFR provisions to maintain accurate citations in [329 IAC 3.1](#).
- Addition of CFR sections to the exclusions from the conversion of federal terms to state-specific terms at [329 IAC 3.1-1-9](#). For some hazardous waste requirements that are incorporated by reference, U.S. EPA administers and enforces the requirements rather than IDEM. The requirements affected in this rulemaking include the international transboundary management of hazardous waste between Organisation for Economic Co-operation and Development (OECD) countries, import-export of hazardous waste, exports of cathode ray tubes, and electronic manifest requirements. IDEM adopts these requirements to maintain consistency and equivalency with federal hazardous waste requirements, but must maintain references to certain federal terms rather than substitute the federal terms with state-specific terms.
- Technical amendments that include updated contact information, clarification of existing rule language, and corrections to inaccurate rule language. IDEM is including these technical amendments to improve existing rules without having an effect on the scope or application of the rules.

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

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule. In addition, this draft rule imposes no restrictions or requirements because the technical amendments have no substantive effect on an existing Indiana rule.

Potential Fiscal Impact

IDEM estimates that this rulemaking will not have a fiscal impact beyond compliance with the federal requirements that are incorporated by reference. Any potential fiscal impact caused by this rulemaking is related to the amended requirements in U.S. EPA final rules that IDEM is proposing to incorporate by reference. Because IDEM is not proposing any rule amendments that are more stringent than the U.S. EPA requirements, this rulemaking will not have an additional fiscal impact deriving from IDEM-initiated rule amendments.

The technical amendments and corrections will not have a fiscal impact because the amendments will not have a substantive effect on the scope or application of the existing rules. The technical amendments and corrections do not include additional rule provisions or require regulated entities to modify their current operations to meet compliance with existing or new requirements. In addition, no new entities will be subject to regulation as a result of the technical amendments and corrections. Therefore, IDEM does not anticipate a fiscal impact from

this element of the rulemaking.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

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

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding the rulemaking on hazardous waste updates as required by federal law. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt amendments to the hazardous waste rules as established in 42 U.S.C. 6926 and 40 CFR 271, if the amendments are more stringent than previous federal hazardous waste requirements.
- (3) Indiana adopts federal requirements that are less stringent than previous requirements to maintain consistency and eliminate potential confusion between state and federal requirements.
- (4) This rule contains technical amendments with no substantive effect on an existing Indiana rule.
- (5) This rule is an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule.
- (6) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because IDEM's hazardous waste rules will be equivalent and consistent with recent amendments to U.S. EPA's hazardous waste rules designed to protect public health and the environment.
- (7) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or

otherwise affected by the rule.

(8) The draft rule is hereby incorporated into these findings.

Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management

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. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #18-481 Hazardous Waste Updates
Dan Watts
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to dwatts1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than December 21, 2018.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 3.1-1-7](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-7](#) References to the Code of Federal Regulations

Authority: [IC 13-19-3-1](#); [IC 13-22-2](#)

Affected: [IC 4-22-2-21](#); [IC 13-14-8](#)

Sec. 7. (a) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the July 1, 2015, 2017, edition. ~~including the amended provisions as published on January 13, 2015, at 80 FR 1771 through 80 FR 1814, and that became effective on July 13, 2015.~~

(b) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the text of the rule.

(Solid Waste Management Division; [329 IAC 3.1-1-7](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.:

[20060712-IR-329050066FRA](#), eff Sep 5, 2006; filed Dec 26, 2007, 1:44 p.m.: [20080123-IR-329060556FRA](#); filed Sep 11, 2009, 2:39 p.m.: [20091007-IR-329080673FRA](#); filed Aug 27, 2010, 11:54 a.m.: [20100922-IR-329090613FRA](#); filed May 29, 2012, 3:20 p.m.: [20120627-IR-329110090FRA](#); filed Mar 15, 2013, 2:44 p.m.: [20130410-IR-329120506FRA](#); filed Jun 3, 2015, 1:21 p.m.: [20150701-IR-329140288FRA](#); errata filed Jul 7, 2015, 10:44 a.m.: [20150729-IR-329150202ACA](#); filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))

SECTION 2. [329 IAC 3.1-1-9](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-9](#) Conversion of federal terms

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-19-3-1](#)

Affected: [IC 13-22](#)

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

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

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

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

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

- (1) Administrator.
- (2) Automated export system (AES) filing compliance date.**
- (3) Electronic import-export reporting compliance date.**
- (4) Electronic manifest.**
- (5) Electronic manifest system.**
- ~~(2)~~ **(6) EPA region.**
- ~~(3)~~ **(7) Regional administrator.**
- (8) User of the electronic manifest system.**

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

- (1) 40 CFR 260.4(a)(4)*.**
- (2) 40 CFR 260.5(b)(2)*.**
- ~~(4)~~ **(3) 40 CFR 261.6(a)(3)(i)(A)*.**
- ~~(2)~~ **(4) 40 CFR 261.6(a)(3)(i)(B)*.**

- (5) 40 CFR 261.39(a)(5)*.
- (6) 40 CFR 261.41*.
- ~~(3)~~ (7) 40 CFR 262.11*, except for 40 CFR 262.11(f).
- (8) 40 CFR 262.20(a)(3)(ii)*.
- ~~(4)~~ (9) 40 CFR 262.21*.
- ~~(5)~~ 40 CFR 262.51.
- ~~(6)~~ 40 CFR 262.52.
- ~~(7)~~ 40 CFR 262.53. See [329 IAC 3.1-7-2](#) for additional information.
- ~~(8)~~ 40 CFR 262.54. See [329 IAC 3.1-7-2](#) for additional information.
- ~~(9)~~ 40 CFR 262.60.
- (10) 40 CFR 262.24(a)(3)*.
- (11) 40 CFR 262.25*.
- (12) 40 CFR 262, Subpart H*.
- ~~(10)~~ (13) 40 CFR 264.12(a)*.
- (14) 40 CFR 264.71(a)(2)(v)*.
- (15) 40 CFR 264.71(d)*.
- (16) 40 CFR 264.71(f)(4)*.
- (17) 40 CFR 264.71(j)*.
- (18) 40 CFR 264, Subpart FF*.
- ~~(14)~~ (19) 40 CFR 265.12(a)*.
- (20) 40 CFR 265.71(a)(2)(v)*.
- (21) 40 CFR 265.71(d)*.
- (22) 40 CFR 265.71(f)(4)*.
- (23) 40 CFR 265.71(j)*.
- (24) 40 CFR 265, Subpart FF*.
- (25) 40 CFR 267.71(a)(6)*.
- (26) 40 CFR 267.71(d)*.
- ~~(12)~~ (27) 40 CFR 270.2*.
- ~~(13)~~ (28) 40 CFR 270.5*.
- ~~(14)~~ (29) 40 CFR 270.11(a)(3)*.
- ~~(15)~~ (30) 40 CFR 270.32(b)(2)*.
- ~~(16)~~ (31) 40 CFR 270.32(c)*.
- ~~(17)~~ (32) 40 CFR 270.72(a)(5)*.
- ~~(18)~~ (33) 40 CFR 270.72(b)(5)*.

(e) In 40 CFR 263*, all references to "EPA", "United States", and "administrator" are retained.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-1-9](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006)

SECTION 3. [329 IAC 3.1-1-10](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-10](#) Notification

Authority: [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-2](#)

Affected: [IC 13-22](#)

Sec. 10. Every hazardous waste generator, transporter, or owner or operator of a hazardous waste facility shall notify the commissioner of activities subject to this article on forms provided by the commissioner unless the activity is exempt from the notification requirements for hazardous waste generated by ~~conditionally exempt~~ **very** small quantity generators under ~~[329 IAC 3.1-6](#)~~ **[329 IAC 3.1-7](#)**.

(Solid Waste Management Division; [329 IAC 3.1-1-10](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))

SECTION 4. [329 IAC 3.1-1-14.1](#) IS AMENDED TO READ AS FOLLOWS:**329 IAC 3.1-1-14.1 Fees****Authority:** [IC 13-14-8](#); [IC 13-22](#)**Affected:** [IC 13-15-11](#); [IC 13-16](#); [IC 13-22-12](#); [IC 13-30-4](#)

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

(1) "Boilers and industrial furnaces" or "BIFs" means facilities as defined under "boilers" and "industrial furnaces" in 40 CFR 260.10*.

(2) "Class 2 modification" refers to the modification classification system described under 40 CFR 270.42*.

(3) "Class 3 modification" refers to the modification classification system described under 40 CFR 270.42*.

(4) "Generator" or "LQG" means a person that:

(A) during the preceding calendar year:

(i) generated in any calendar month more than one thousand (1,000) kilograms of hazardous waste or more than one (1) kilogram of acute hazardous waste;

(ii) regardless of a person's rate of generation, accumulated at any time more than one (1) kilogram of acute hazardous waste; or

(iii) regardless of a person's rate of generation, accumulated at any time more than six thousand (6,000) kilograms of hazardous waste; or

(B) generated or accumulated in any calendar month more than one hundred (100) kilograms of spill clean-up material contaminated with acute hazardous waste.

~~(5)~~ (4) "Ground water monitoring well" means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.~~(6)~~ (5) "Land disposal" includes interim status and permitted hazardous waste landfills and interim status and permitted hazardous waste surface impoundments.**(6) "Large quantity generator" means the term as defined in 40 CFR 260.10*.**

(7) "Operation" or "operating", for the purpose of this section, means the following:

(A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste is present in the unit as of January 1.

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

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

(9) "Treatment" means the term as defined in 40 CFR 260.10* and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under ~~40 CFR 262.34~~, 40 CFR 261.4*, and 40 CFR 261.6*, **and 40 CFR 262.14 through 40 CFR 262.17*.**~~(10) "Treatment storage disposal" or "TSD" means the term as defined in 40 CFR 260.10.~~(b) In accordance with [IC 13-22-12-2](#) and [IC 13-22-12-3](#), hazardous waste fees are as follows:

(1) New permit application fees are as follows:

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

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

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

(3) Class 2 modification fee: \$2,250

(4) Annual operation fees are as follows:

(A) Land disposal:	\$37,500
(B) Incinerator (per unit):	\$10,000
(C) Storage:	\$2,500
(D) Treatment (including boilers and industrial furnaces):	\$10,000
(E) Large quantity generator:	\$1,565

(F) Post-closure activity:	\$1,500
(G) Ground water compliance sampling at active facilities (per well):	\$1,000

(c) Requirements for application fees are as follows:

- (1) The fees must be submitted with the hazardous waste permit application. **The commissioner shall deny hazardous waste permit applications ~~will be denied~~ without the application fee.**
- (2) The fees are not refundable once staff review of the application has commenced.

(d) The annual operation fee schedule is established in [IC 13-22-12](#). ~~and applies to~~ The following **additional requirements apply for persons or facilities subject to the annual operation fee schedule:**

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

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

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

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

(4) ~~No~~ Waivers exist for large quantity generators ~~(LQGs)~~. **are not allowed.**

(5) Permitted ~~TSDs~~ **treatment, storage, or disposal facilities** that choose not to manage hazardous waste ~~will be assessed a~~ **are required to pay the applicable** fee. Fees are assessed for facilities that have the ability to manage hazardous waste.

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

(7) Facilities that are issued a post-closure permit ~~will be assessed~~ **are required to pay** the post-closure fee. ~~Landfills will be assessed~~ The fee **for the facility is assessed** for the duration of the post-closure period.

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

- (A) no more than thirty (30) days after the date the fee is assessed; or
- (B) by the date the installment is due.

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

(e) Installment payments are established as follows:

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

- (A) the person determines that a single payment of the entire fee is an undue hardship; and
- (B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.

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

- (A) quarterly basis **are due on:**
 - (i) February 15;
 - (ii) May 15;
 - (iii) August 15; and
 - (iv) November 15; or
- (B) semiannual basis **are due on:**
 - (i) February 15; and
 - (ii) August 15.

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

(f) In addition to the penalties described under [IC 13-30-4](#), the following ~~will occur:~~ **requirements apply:**

(1) **A person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable, if a the person does not remit a hazardous waste annual operation fee or an installment established under subsection**

(e)(2) within:

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

- (B) thirty (30) days after the date the installment is due.
~~the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable.~~
- (2) The delinquency charge **described in subdivision (1)** is due and payable:
- (A) sixty (60) days after the date the hazardous waste annual operation fee is assessed; or
 - (B) thirty (30) days after the date the installment is due.
- (3) **The commissioner may revoke a person's permit** if a **the** person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge within:
- (A) ninety (90) days after the date the hazardous waste annual operation fee is assessed; or
 - (B) sixty (60) days after the date the installment is due.
- ~~the commissioner may revoke the person's permit.~~
- (4) Before revoking a person's permit under subdivision (3), the commissioner shall send a written notice by certified mail that:
- (A) describes what fees and delinquency charge are due; and
 - (B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.
- (g) The fees and delinquency charges collected under this section must be:
- (1) payable to the department; and
 - (2) deposited in the environmental management permit operation fund established under ~~IC 13-15-11-3~~. **IC 13-15-11**.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-1-14.1](#); filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#))

SECTION 5. [329 IAC 3.1-4-25.1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-4-25.1](#) "Utilize" defined

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22](#)

Sec. 25.1. "Utilize" means to legitimately incorporate a secondary material into an industrial or manufacturing process to make a usable product without intervening reclamation or recovery, and includes any necessary transportation directly between the generator and user or storage by the generator or user of the secondary material, but which must occur without speculative accumulation as defined in "accumulating speculatively", defined in ~~40 CFR 261.1(a)(8)~~, **40 CFR 261.1(c)(8)***, or in a manner that constitutes disposal.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-4-25.1](#); filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 6. [329 IAC 3.1-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-5-1](#) Purpose; scope; applicability

Authority: [IC 13-14-8](#); [IC 13-22-2](#)

Affected: [IC 4-21.5](#); [IC 13-22](#)

Sec. 1. (a) This rule establishes standards, criteria, and procedures for the following:

- (1) General rulemaking petitions.
- (2) Petitions for equivalent testing or analytical methods.
- (3) Petitions to exclude a waste produced at a particular facility.
- (4) Exemptions to be classified as solid waste.
- (5) Exemptions to be classified as a boiler.
- (6) Additional regulation of certain hazardous waste recycling activities.
- (7) Exemptions from land disposal restrictions.
- (8) Notification and legitimate recycling of secondary hazardous materials.
- (9) Procedures for the hazardous waste electronic manifest system.**

(b) Final decisions of the commissioner made pursuant to this rule are subject to the notice requirements and procedures prescribed under [IC 4-21.5](#).

(Solid Waste Management Division; [329 IAC 3.1-5-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))

SECTION 7. [329 IAC 3.1-5-4](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-5-4](#) Exemption from classification as a solid waste or to be classified as a boiler; adoption of federal procedures

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#)

Sec. 4. (a) ~~The standards, criteria, and procedures for Granting exemptions from classification as a solid waste or to be classified as a boiler contained in~~ **must be performed in accordance with 40 CFR 260.30 through 40 CFR 260.33***. ~~are hereby adopted and incorporated by reference, and made applicable to this article.~~

(b) ~~In 40 CFR 260.33(a)*, delete the words "in the region where the recycler is located".~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-5-4](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 8. [329 IAC 3.1-5-8](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 3.1-5-8](#) Hazardous waste electronic manifest system; adoption of federal requirements

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 4-22-2-21](#); [IC 13-22-2](#)

Sec. 8. Hazardous waste electronic manifest system requirements must be performed in accordance with 40 CFR 260.4* and 40 CFR 260.5*, as added by 83 FR 451 through 83 FR 462*.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-5-8](#))

SECTION 9. [329 IAC 3.1-6-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-6-1](#) Adoption of federal identification and listing of hazardous waste

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2-3](#)

Sec. 1. (a) This rule identifies those solid wastes which are subject to regulation as hazardous waste under this article and which are subject to the notification requirements of [329 IAC 3.1-1](#).

(b) Except as provided otherwise in section 2 of this rule, ~~the requirements of 40 CFR 261*, is hereby incorporated by reference.~~ **as amended by 82 FR 60900 through 82 FR 60901***, apply to the identification and listing of hazardous waste.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-6-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2062; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 10. [329 IAC 3.1-6-3](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-6-3](#) Indiana additions; listing of hazardous waste

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-11-2-99](#); [IC 13-11-2-205](#); [IC 13-22-2-3](#)

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

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

(b) The chemical munitions in subdivisions ~~(1) through (6)~~ **subsection (a)** have the Indiana hazardous waste number I001 and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection ~~(b)~~: **(c)**.

~~(b)~~ **(c)** A generator may accumulate as much as fifty-five (55) gallons of waste derived from a waste listed in subsection (a)(6) at or near any point of generation where wastes initially accumulate, when that waste is managed in accordance with all other requirements of ~~40 CFR 262.34(e)(1)~~: **40 CFR 262.15***.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-6-3](#); filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#))

SECTION 11. [329 IAC 3.1-6-5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-6-5](#) Secondary materials

Authority: [IC 13-14-8](#); [IC 13-22-2](#)

Affected: [IC 13-22](#)

Sec. 5. (a) A secondary material that causes no significant increase in the threat posed to human health or the environment as defined in subsection (e)(4) is not a solid waste if it:

- (1) does not meet the definition of solid waste under ~~40 CFR 261.2(e)~~; **40 CFR 261.2***; or
- (2) is legitimately utilized as defined under [329 IAC 3.1-4-25.1](#) in an industrial process, except reclamation as defined under [329 IAC 3.1-4-21.1](#).

(b) A secondary material generated as a result of the utilization of a secondary material that does not qualify as an exempt secondary material is a solid waste and subject to a waste determination as to the waste's status as a hazardous waste as follows:

- (1) ~~This~~ **The** waste determination ~~shall~~ **must** be conducted according to the requirements of 40 CFR 262.11*.
- (2) In the case of a secondary material that is listed under this rule, a solid waste generated from the utilization **of a secondary material** in accordance with this section does not retain the listing from which the secondary material is derived.

(c) ~~There is no requirement for~~ A permit under this article **is not required** for the use of a secondary material as a manufacturing ingredient when used as a legitimate manufacturing ingredient in accordance with the requirements of this section.

(d) The commissioner shall:

- (1) provide a written determination for recognition of the secondary material exemption upon request; and
- (2) respond no later than ninety (90) days after the request is received.

(e) In making a determination on legitimate use of secondary materials, the following criteria ~~shall~~ **must** be considered, when relevant, for determining legitimate use and exempt status:

- (1) The secondary material must be utilized in the manufacturing process without intervening reclamation or recovery.
- (2) Transportation must be directly between the generator of the secondary material and the user of the secondary material.
- (3) The secondary material or the resultant product, or both, must not be accumulated speculatively as defined at ~~40 CFR 261.1(a)(8)~~; **40 CFR 261.1(c)(8)***.
- (4) The secondary material must be handled in a manner that poses no significant increase in the threat to human health or the environment beyond that posed by the use of the raw material being replaced. This may be demonstrated by showing the secondary material is handled in a manner that: ~~is~~
 - (A) **is** consistent with the raw materials being replaced; and
 - (B) guards against loss or release during storage.
- (5) The manufacturing process cannot be a reclamation activity. In evaluating this factor, the commissioner ~~will~~ **shall** use the definition of reclamation in [329 IAC 3.1-4-21.1](#) to distinguish between reclamation and other manufacturing processes.
- (6) The secondary material must be a legitimate ingredient necessary to the production process or product. This may be demonstrated by showing any of the following:
 - (A) The secondary material is effective in the manufacturing process.
 - (B) The secondary material is used under controlled conditions.
 - (C) The user documents and can show through records how, when, and in what volumes the secondary material is used.
 - (D) In two-party transactions, there is consideration, usually monetary, reflecting the value of the secondary material to the user.
 - (E) There are written specifications for the incoming material and the product.
 - (F) There is a program in place by which the user verifies that incoming materials meet established specifications.
- (7) The person must demonstrate that there is a market for the product. This may be demonstrated by showing any of the following:
 - (A) Industry-recognized quality specifications for the product.
 - (B) Any recognitions of the product as a commodity.
 - (C) Contracts for purchase of the product or other agreements.

(f) The product cannot be burned for energy recovery or used in a manner constituting disposal unless the secondary material is a fuel or originally intended to be used in a manner involving placement on the land.

*These document are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-6-5](#); filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 12. [329 IAC 3.1-7-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-7-1](#) Adoption of federal standards applicable to generators of hazardous waste

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#)

Sec. 1. Except as provided otherwise in section 2 of this rule, **generators of hazardous waste must comply with 40 CFR 262***, ~~is hereby incorporated by reference. as amended by:~~

- (1) **82 FR 60900 through 82 FR 60901***; and
- (2) **83 FR 451 through 83 FR 462***.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-7-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; filed May 6, 1994, 5:00 p.m.: 17 IR 2063)

SECTION 13. [329 IAC 3.1-7-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-7-2](#) Exceptions and additions; generator standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); [IC 13-22-4-3.1](#)

Sec. 2. **The following are exceptions, and additions, and substitutions** to federal standards for generators: ~~are as follows:~~

- (1) Delete ~~40 CFR 262.42(b)~~ **40 CFR 262.18(b)** and substitute **with "A generator who has not received an a U.S. EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an a U.S. EPA identification number will be assigned."**
- (2) In addition to the requirements of 40 CFR 262.40, a generator shall keep the reports required by [IC 13-22-4-3.1](#) on file for at least three (3) years after submission to the department.
- (3) Delete ~~40 CFR 262.44~~ **In 40 CFR 262.41(a) and 40 CFR 262.41(b)** dealing with biennial reporting, and substitute section 14 of this rule. **delete the phrase "EPA form 8700-13 A/B" and substitute with "forms provided by the department and prepared in accordance with the instructions on the form."**
- (4) In 40 CFR 262.42(a)(2) and **40 CFR 262.42(b)**, delete "in the Region in which the generator is located".
- (5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.
- (6) ~~In 40 CFR 262.53* and 40 CFR 262.54*, references to the "EPA" are retained.~~ A copy of the notification of intent to export, which must be submitted to the **U.S. EPA in accordance with 40 CFR 262.83(b)**, must also be submitted to the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Room 1101, Indianapolis, Indiana 46204-2251.
- (7) Exception reports required from primary exporters pursuant to ~~40 CFR 262.55*~~ **40 CFR 262.83(h)** must be ~~filed with~~ **sent to** the Regional Administrator of the **U.S. EPA** and the commissioner.
- (8) ~~Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.~~
- (9) ~~In 40 CFR 262.57(b)*, the reference to the "administrator" is retained.~~ **(8) In addition to the record retention times required in 40 CFR 262.83**, the commissioner may also request extensions of record retention times for hazardous waste export records.

~~*These documents are incorporated by reference. Copies may be obtained from the Government Publishing~~

Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-7-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006; filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))

SECTION 14. [329 IAC 3.1-8-1](#) IS AMENDED TO READ AS FOLLOWS:

Rule 8. Standards Applicable to Transporters of Hazardous Waste

[329 IAC 3.1-8-1](#) Adoption of federal standards applicable to transporters of hazardous waste

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22](#)

Sec. 1. Except as provided otherwise in section 2 of this rule, **transporters of hazardous waste must comply with 40 CFR 263***, ~~is hereby incorporated by reference.~~ **as amended by 83 FR 451 through 83 FR 462*.**

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-8-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 15. [329 IAC 3.1-9-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-9-1](#) Adoption of federal standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22](#)

Sec. 1. Except as provided otherwise in section 2 of this rule, **owners and operators of hazardous waste treatment, storage, and disposal facilities must comply with 40 CFR 264***, ~~is hereby incorporated by reference.~~ **as amended by 83 FR 451 through 83 FR 462*.**

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-9-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 16. [329 IAC 3.1-9-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-9-2](#) Exceptions and additions; final permit standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-14-10](#); [IC 13-22-2](#); [IC 13-22-4-3.1](#); [IC 13-30-3](#)

Sec. 2. **The following are exceptions, and additions, and substitutions** to federal final permit standards: are as follows:

- (1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: with "The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities."
- (2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "[IC 13-30-3](#) and [IC 13-14-10](#)".
- (3) Reports to the state required at 40 CFR 264.56(d) shall **must** be communicated immediately to the Office of Land Quality, Indiana Department of Environmental Management, 400 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, **Office of Land Quality, Emergency Response Section, at (317) 233-7745 for out-of-state calls, or (888) 233-7745 for in-state calls** (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under [327 IAC 2-6.1](#) shall be complied with: **must be met.**
- (4) The written spill report required by ~~40 CFR 264.56(j)~~ **40 CFR 264.56(i)** must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of [327 IAC 2-6.1](#).
- (5) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" "**EPA Form 8700-13 A/B**" and insert "forms provided by the commissioner".
- ~~(6) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".~~
- ~~(7)~~ **(6)** In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:
 - (A) Two (2) paper copies on the most current form prescribed by the commissioner.
 - (B) In addition to the paper copies required in clause (A), an electronic report in a format prescribed by the commissioner.
- (d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner."
- ~~(8)~~ **(7)** In addition to the requirements in 40 CFR 264, Subpart E, the reports required by [IC 13-22-4-3.1](#) must be kept on file for at least three (3) years after submission to the department.
- ~~(9)~~ **(8)** In 40 CFR 264, Subpart F, the commissioner ~~will~~ **shall** consider the following contaminants in addition to the hazardous constituents listed in 40 CFR 261, Appendix VIII*:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Ethylbenzene	100-41-4
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9
Styrene	100-42-5

- ~~(10)~~ **(9)** In 40 CFR 264.93(b), the commissioner may consider [327 IAC 2-11](#) in addition to the factors listed.
- ~~(11)~~ **(10)** Delete 40 CFR 264.94(a)(2), Table 1, and substitute the following:

Table 1. Maximum Concentration of Constituents for Ground Water Protection	
Constituent	Maximum Concentration (mg/L)

Arsenic	0.010
Barium	1.0
Cadmium	0.005
Chromium	0.05
Lead	0.015
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.0002
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.04
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.003
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

~~(12)~~ **(11)** In 40 CFR 264.94(b), the commissioner may consider [327 IAC 2-11](#) in addition to the factors listed.

~~(13)~~ **(12)** In 40 CFR 264.99(g), in addition to the constituents listed in 40 CFR 264, Appendix IX, the commissioner may require a facility to monitor for the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9

~~(14)~~ **(13)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute [329 IAC 3.1-15](#).

~~(15)~~ **(14)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

~~(16)~~ **(15)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

~~(17)~~ **(16)** Delete 40 CFR 264.301(l).

~~(18)~~ **(17)** Delete 40 CFR 264, Appendix VI.

~~(19)~~ **(18)** In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(20)~~ **(19)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

~~(21)~~ **(20)** Delete 40 CFR 264.555(e)(6).

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-9-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jul 22, 2004, 10:15 a.m.: 27 IR 3980; errata filed Aug 9, 2004, 10:45 a.m.: 27 IR 4023; filed Dec 26, 2007, 1:44 p.m.: [20080123-IR-329060556FRA](#))

SECTION 17. [329 IAC 3.1-10-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-10-1](#) Adoption of federal interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22](#)

Sec. 1. Except as provided otherwise in section 2 of this rule, **owners and operators of hazardous waste treatment, storage, and disposal facilities must comply with the interim status standards in 40 CFR 265*, is hereby incorporated by reference: as amended by 83 FR 451 through 83 FR 462*.**

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-10-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 18. [329 IAC 3.1-10-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-10-2](#) Exceptions and additions; interim status standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 4-21.5](#); [IC 13-14-10](#); [IC 13-22-2](#); [IC 13-22-4-3.1](#); [IC 13-30-3](#)

Sec. 2. **The following are exceptions, and additions, and substitutions to federal interim status standards: are as follows:**

- (1) In 40 CFR 265.1(a) dealing with scope of the permit, delete "national" and insert "state".
- (2) In 40 CFR 265.1(b), delete "section 3005 of RCRA" and insert "[329 IAC 3.1-13](#)" in both places **each place** where it occurs.
- (3) Delete 40 CFR 265.1(c)(4).
- (4) In 40 CFR 265.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "[IC 13-30-3](#) and [IC 13-14-10](#)".
- (5) Reports to the state required at 40 CFR 265.56(d) shall **must** be communicated immediately to the Office of Land Quality, Indiana Department of Environmental Management, 400 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, **Office of Land Quality, Emergency Response Section, at (317) 233-7745 for out-of-state calls, or (888) 233-7745 for in-state calls** (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under [327 IAC 2-6.1](#) shall be complied with: **must be met.**
- (6) The written spill report required by ~~40 CFR 265.56(j)~~ **40 CFR 265.56(i)** must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of [327 IAC 2-6.1](#).
- (7) In 40 CFR 265.75 dealing with the biennial report, delete "EPA form 8700-13B" **"EPA Form 8700-13 A/B"** and insert "form provided by the commissioner".
- (8) In 40 CFR 265.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".
- (9) **(8)** In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (c), "Ground water data

for laboratory analytical results and field parameters must be submitted as follows:

- (A) Two (2) paper copies on the most current form prescribed by the department.
 (B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department."
- {10} **(9)** In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (d), "The commissioner may request other information as required by Subparts AA through CC of this part be submitted in an electronic format as prescribed by the commissioner."
- {11} **(10)** In addition to the requirements in 40 CFR 265, Subpart E, the reports required by [IC 13-22-4-3.1](#) must be kept on file for at least three (3) years after submission to the department.
- {12} **(11)** In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date: **the phrases:**
(A) "Within one year after the effective date of these regulations" at 40 CFR 265.90(a) and 40 CFR 265.90(d)(1); and
(B) "Not later than one year after the effective date of these regulations" at 40 CFR 265.90(d)(2).
- {13} **(12)** Delete 40 CFR 265.112(d)(3)(ii) and substitute **with** "Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under [IC 13-30-3](#), or final administrative order under [IC 4-21.5](#) to cease receiving hazardous waste or close".
- {14} **(13)** Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision {14}: **(12)**.
- {15} **(14)** Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute [329 IAC 3.1-14](#).
- {16} **(15)** In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments ~~shall only apply~~ **applies** to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments ~~shall~~ **must** be completed on all remaining tank systems by December 20, 1989.
- {17} **(16)** In 40 CFR 265.191(c), delete "July 14, 1986" and insert "June 20, 1988".
- {18} **(17)** In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in [329 IAC 3.1-9-3\(c\)\(1\)](#) through [329 IAC 3.1-9-3\(c\)\(8\)](#).
- {19} In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".
- {20} **(18)** In 40 CFR 265.301(d)(2)(i)(C), delete "RCRA Section 3005(c)" and insert "[329 IAC 3.1-13](#)".
- {21} In 40 CFR 265.314(g)(2) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".
- {22} **(19)** In 40 CFR 265.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".
- {23} **(20)** In 40 CFR 265.316(f), delete "fiber drums" and substitute "nonmetal containers".
- {24} **(21)** Delete 40 CFR 265.430(b) and substitute ~~the following:~~ **with** "The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule."

(Solid Waste Management Division; [329 IAC 3.1-10-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2434; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3113; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1876)

SECTION 19. [329 IAC 3.1-11-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-11-2](#) Exceptions and additions; specific standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-15-2](#); [IC 13-22-2](#)

Sec. 2. **The following are exceptions, and additions, and substitutions** to standards for the management of specific hazardous waste and specific types of hazardous waste facilities: ~~are as follows:~~

- (1) Delete 40 CFR 266.23(b) and substitute ~~the following:~~ **with** "No person may apply or allow the application of used oil as defined in [329 IAC 3.1-4](#) to any ground surface except for purposes of treatment in accordance with a permit issued by the department under [IC 13-15-2](#). The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited."
- (2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites ~~shall be~~ **are** converted as follows:
 (A) 264.141 means [329 IAC 3.1-15-2](#).

(B) 264.142 means [329 IAC 3.1-15-3](#).

(C) 264.143 means [329 IAC 3.1-15-4](#).

(D) 264.147 through 264.151 means [329 IAC 3.1-15-8](#) through [329 IAC 3.1-15-10](#).

(3) Delete 40 CFR 266, Subpart G, except for 40 CFR 266.80(a)(6) through ~~40 CFR 266.80(a)(7)~~, **40 CFR 266.80(a)(10)**, and insert [329 IAC 3.1-11.1](#).

(Solid Waste Management Division; [329 IAC 3.1-11-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 15, 2013, 11:02 a.m.: [20130814-IR-329090365FRA](#); filed Jun 3, 2015, 1:21 p.m.: [20150701-IR-329140288FRA](#))

SECTION 20. THE FOLLOWING ARE REPEALED: [329 IAC 3.1-4-24](#); [329 IAC 3.1-7-14](#); [329 IAC 3.1-7-16](#).

[Notice of Public Hearing](#)

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