

TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD
#05-182(SWMB)

**DEVELOPMENT OF NEW RULES CONCERNING INSPECTION AND
CLEANING OF PROPERTIES CONTAMINATED BY CHEMICALS USED IN
THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at 329 IAC 17 concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance. This rulemaking is required by IC 13-14-1-15. This rule would include the following subject matter:

- Requirements to have a contaminated property decontaminated and inspected before reoccupying or reusing the property or transferring any interest in the property to another person.
- Qualification and certification of persons who inspect and clean contaminated property.
- Standards for inspection and decontamination of contaminated property.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: August 1, 2005, Indiana Register (28 IR 3359).

CITATIONS AFFECTED: 329 IAC 17.

AUTHORITY: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IC 13-14-1-15 (Public Law 192-2005, SECTION 6) requires the Indiana Department of Environmental Management (IDEM) to maintain a list of persons certified to inspect and clean property that is contaminated by a contaminant, including chemical reagents and precursors used in the illegal manufacture of illegal drugs. IDEM may establish qualifications and expertise required for certification as a person qualified to inspect and clean contaminated properties. In addition, P.L. 192-2005 expanded the definition of “contaminant” in IC 13-11-2-42 to include “chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or an immediate precursor (as defined in IC 35-48-1-17) of a controlled substance.”

IC 13-14-1-15 requires IDEM to adopt rules to implement these requirements and authorizes IDEM to regulate inspection and cleaning of property contaminated by chemicals used in the illegal manufacture of a controlled substance.

Currently, Indiana has no statutory or regulatory requirement for owners, operators, lessors, or persons in charge of real property to clean or decontaminate that property if is

found to have been used for the illegal manufacture of controlled substances. There is also no explicit requirement for the property owner to disclose that information when renting or selling the property. As a result, prospective buyers and lessees must rely on other sources of information and have no way to assure themselves that the property has been properly decontaminated.

When use of the property for illegal drug manufacturing is discovered, the Indiana State Police or other law enforcement agency with responsibility for dismantling the laboratory and investigating the incident records the facts about the incident and the property and provides that information to other agencies as required by law. That information is available to the public, including prospective buyers and lessees.

However, none of those agencies has either the resources or the responsibility to ensure the property is properly cleaned and is safe to reoccupy. As a result, there is no formal means for a property owner to demonstrate that the property has been rendered safe and the defect has been corrected. This rule is intended to provide a uniform, credible means to allow the owner of a contaminated property to demonstrate that the property has been properly decontaminated and is safe to reoccupy.

This draft rule was developed in consultation with the Indiana State Department of Health (ISDH), the Indiana State Police (ISP), the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, and the Boone County Solid Waste Management District. IDEM thanks these agencies for their assistance.

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

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

NIFL Element A. 329 IAC 17-3-1: Property owners would be required to decontaminate their contaminated property using a person certified to decontaminate under this article before reoccupying the property or transferring the property to another person. A person who transfers contaminated property must disclose the previous existence of an illegal drug manufacturing operation at that property and provide a copy of the certificate of decontamination to the other party, prior to transferring their interest in that property.

(1) Dwellings and other real property in Indiana are being contaminated with chemicals used in the illegal manufacture of controlled substances. This contamination presents a serious health threat to children and adults who will occupy these dwellings. It also results in reduced property value and marketability of the contaminated properties and surrounding properties. Approximately 1000 of these properties were reported to Indiana law enforcement agencies in 2005. IC 13-14-1-15 requires IDEM to maintain a list of contractors who are qualified to inspect and clean property contaminated by chemicals used in the illegal manufacture of controlled substances. IC 13-14-1-15 also authorizes IDEM to develop standards for inspection and cleaning of contaminated property. There are no corresponding federal requirements.

(2) The potential economic impact of this element is estimated to be up to \$5,000,000 as described below under “Potential Fiscal Impact.”

(3) IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police, the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, the Boone County Solid

Waste Management District, and Ferguson Harbour, Inc.

NIFL Element B. A person who supervises decontamination of property used for illegal manufacture of controlled substances would have to be certified by IDEM and meet certain training requirements. The certified person would be required to assess the property to determine the types and amounts of contamination present, supervise decontamination of the property, inspect the property for remaining contaminants to ensure the contaminant levels are below the decontamination levels specified in the rule, and certify to the property owner in writing that decontamination is complete and the property met the decontamination levels at the time of the inspection. Persons who apply for certification under this rule would be required to attend training specific to decontamination of property contaminated by chemicals used in the illegal manufacture of controlled substances provided by IDEM with assistance from ISDH and ISP. This training would be provided as often as required to meet demand and could be provided at different locations.

(1) There are currently no requirements or standards for certification of persons to inspect and clean property that has been contaminated by chemicals used in the illegal manufacture of controlled substances. This lack of standards results in property owners being unable to ensure that their properties will be properly decontaminated, and potential lessees or purchasers being unable to assure themselves that a property is safe to occupy. There are no corresponding federal standards.

(2) The cost of this element cannot be accurately estimated at this time but is expected to be limited to salaries and travel expenses of supervisors who must obtain certification under this rulemaking.

(3) IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police, the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, the Boone County Solid Waste Management District, and Ferguson Harbour, Inc.

Potential Fiscal Impact

The potential fiscal impact of this rulemaking to owners or operators of contaminated properties cannot be accurately estimated at this time. The Indiana State Police estimates that they will be notified of approximately 1000 illegal drug manufacturing operations in 2005, and anticipate a similar number in 2006.

One cleanup contractor estimated a cost of up to \$15,000 per structure to properly decontaminate a structure contaminated with methamphetamine or another illegal controlled substance, with a median cost of about \$5,000. The proposed rule would allow a property owner to demolish the structure without decontamination, and it is unknown how many property owners would exercise that option. Based on this information, the potential cost to owners of contaminated properties could be as much as \$5,000,000 per year. It is not possible to determine how many property owners would elect to demolish the contaminated property without decontaminating it, and what the economic effect of exercising that alternative would be.

No studies of the health effects of living in a dwelling contaminated by methamphetamine or other illegal controlled were available during development of this rule. IDEM has no information on the economic benefits of decontaminating these dwellings, however it is intuitive that reducing or eliminating these contaminants in dwellings will produce tangible health and economic benefits to the adults and children who will occupy these structures by preventing adverse health effects from contact with illegal drugs and chemicals used to manufacture illegal drugs.

No information is currently available on the effect on surrounding property values of reducing the number of structures that become abandoned or reduced in value by being used as illegal drug manufacturing operations. IDEM expects the requirement to properly decontaminate these contaminated properties to reduce the number of abandoned and unsafe properties and have a tangible positive economic impact on surrounding properties.

The number of persons who would apply for certification under this rulemaking is unknown at this time. The costs to these persons and contractors to become certified would be the costs to attend the required training provided by ISP and IDEM, including salaries and travel costs. IDEM is requesting specific information on these costs for training delivered at a central location and for training provided at locations closer to the applicants.

The potential economic impact of this rulemaking on regulated entities will exceed \$500,000 and the rule will be submitted to the Legislative Services Agency for analysis as required by IC 4-22-2-28. IDEM is requesting specific information on the potential economic impact, including the economic benefits, of this rulemaking .

Public Participation and Workgroup Information

IDEM may establish an external workgroup to discuss issues involved in this rulemaking. If you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

If too many applications are received to form a functional work group, the department will select a representative group from the applications on file.

The formation of this work group will be announced on IDEM's rulemaking website: <http://www.in.gov/idem/rules/>.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or submit suggestions related to the workgroup process, please contact Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking. A list of workgroup members and the interests they represent will be provided on request.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 1, 2005, through August 31, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Michael D. Morris, EHS Technology Group, LLC (EHS)

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

Comment: The commentor asked to be included in the workgroup. (EHS)

Response: IDEM concurs and will add the commentor to an external workgroup if one is formed.

REQUEST FOR PUBLIC COMMENTS

This notice solicits the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

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

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 1, 2006.

Additional information regarding this action may be obtained from Steve Mojonier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking website at <http://www.in.gov/idem/rules/>.

DRAFT RULE

Article 17. Inspection and Remediation of Contaminated Property

Rule 1. General.

329 IAC 17-1-1 Applicability

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 1. This rule applies to:

- (1) the owner, lessee, operator, or other person in control of a contaminated property; and**
- (2) a person who applies for and obtains certification to inspect and clean contaminated property.**

(Solid Waste Management Board; 329 IAC 17-1-1)

Rule 2. Definitions.

329 IAC 17-2-1 General

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 1. The definitions in IC 13-11-2 apply throughout this rule. In addition, the definitions in this rule apply throughout this article. *(Solid Waste Management Board; 329 IAC 17-2-1)*

329 IAC 17-2-2 “Certified person” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 2. “Certified person” means a person, as defined in IC 13-11-2-158(a), who has been certified by the department under this rule as qualified to supervise decontamination of contaminated property and certify that the property meets the decontamination levels specified in 329 IAC 17-4-6, Table 1. A person is certified to supervise decontamination of a contaminated property when the department places that person’s name on the list of certified persons. *(Solid Waste Management Board; 329 IAC 17-2-2)*

329 IAC 17-2-3 “Chemicals used in the illegal manufacture of a controlled substance” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

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. The term includes:

- (1) illegally manufactured controlled substances;**
- (2) immediate precursors as defined in IC 35-48-1-17;**
- (3) chemical reagents and precursors as defined in IC 35-48-4-14.5; and**
- (4) other substances used in or resulting from the illegal manufacture of controlled substances.**

(Solid Waste Management Board; 329 IAC 17-2-3)

329 IAC 17-2-4 “Contaminated property” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 4. “Contaminated property” means:

- (1) real property; or**
- (2) a vehicle;**

that has been identified by a state or local law enforcement agency as having been used for illegal manufacture of a controlled substance and can reasonably be expected to be

contaminated with chemicals used in the illegal manufacture of a controlled substance. A property is no longer a contaminated property when the certificate of decontamination is issued. (Solid Waste Management Board; 329 IAC 17-2-4)

329 IAC 17-2-5 “Decontaminate” or “decontamination” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.
Affected: IC 13-14-1-15

Sec. 5. “Decontaminate” or “decontamination” means all activities related to assessment and 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. (Solid Waste Management Board; 329 IAC 17-2-5)

329 IAC 17-2-6 “Illegally manufactured controlled substance” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.
Affected: IC 13-14-1-15

Sec. 6. “Illegally manufactured controlled substance” means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured. (Solid Waste Management Board; 329 IAC 17-2-6)

329 IAC 17-2-7 “Inspect” or “inspection” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.
Affected: IC 13-14-1-15

Sec. 7. “Inspect” or “inspection” means all activities described in 329 IAC 17-4-6. The term does not include activities of state and local law enforcement agencies, hazardous materials responders, local health departments, county health departments, or city health departments. (Solid Waste Management Board; 329 IAC 17-2-7)

329 IAC 17-2-8 “Manufacture” defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.
Affected: IC 13-14-1-15

Sec. 8. “Manufacture” has the meaning set forth in IC 35-48-1-18. (Solid Waste Management Board; 329 IAC 17-2-8)

Rule 3. Decontamination of Contaminated Property.

329 IAC 17-3-1 Decontamination by certified person required

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.
Affected: IC 13-14-1-15

Sec. 1. (a) The owner, lessee, operator, or other person in control of a contaminated property shall have that contaminated property decontaminated by a certified person and must obtain a certificate of decontamination under 329 IAC 17-4-7 before:

(1) reoccupying or reusing the property or allowing it to be reoccupied or reused;

or

(2) transferring any interest in the property to another person; except as provided in subsection (d) or (e).

(b) The owner, lessee, operator, or other person in control of a contaminated property shall not transfer their interest in that property to another person until the transferor of the property has:

(1) disclosed in writing to each of the other parties to the transfer of property the existence on that property of an operation that:

(A) illegally manufactured controlled substances; and

(B) came to the notice of a law enforcement agency; and

(2) provided to each of the other parties to the transfer of property a copy of the certificate of decontamination and all analytical reports attached to the certificate of decontamination.

(c) The owner, lessee, operator, or other person in control of a contaminated property shall not decontaminate or inspect property controlled by that person.

(d) A contaminated property that is a structure may be demolished and disposed of in accordance with 329 IAC 10 without complying with subsections (a) through (b).

(e) A vehicle may be disposed of under IC 9-22 without complying with subsection (a). (*Solid Waste Management Board; 329 IAC 17-3-1*)

329 IAC 17-3-2 Decontamination by uncertified person prohibited.

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 2. (a) A person who is not certified by the department to decontaminate or inspect contaminated property 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 certified by the department as a certified person is not valid to certify decontamination of a contaminated property. (*Solid Waste Management Board; 329 IAC 17-3-2*)

Rule 4. The Certified Person.

329 IAC 17-4-1 Who must be certified

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 1. (a) The person who performs any of the activities listed in section 5 of this rule must be certified under this article.

(b) A person who:

(1) is not a supervisor; and

(2) decontaminates a contaminated property under the supervision of a certified person;

is not required to be certified but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. This training must include information on the hazards associated with illegal drug manufacturing operations in Indiana. (*Solid Waste Management Board; 329 IAC 17-4-1*)

329 IAC 17-4-2 Criteria for certification

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 2. (a) A certified person must meet all of the criteria in this section.

(b) Each certified person must have accumulated at least forty (40) hours of experience decontaminating contaminated properties under the supervision of a certified person or another person who has equivalent qualifications that are acceptable to the commissioner.

(c) Each certified person must have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005. This training must include information on the hazards associated with illegal drug manufacturing operations in Indiana.

(d) Each certified person must have:

(1) received training on decontamination and inspection of contaminated property provided by the department; and

(2) passed an examination on the subject matter of the training provided by the department with a score of eighty percent (80%) or greater.

(e) Each certified person must receive 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.

(Solid Waste Management Board; 329 IAC 17-4-2)

329 IAC 17-4-3 Application for certification

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 3. (a) A person who wishes to be certified as a certified person must apply to the department in writing for certification. 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 list

of certified persons.

(b) Mail or deliver the application to:

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

(Solid Waste Management Board; 329 IAC 17-4-3)

329 IAC 17-4-4 List of certified persons

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 4. (a) The department will review the application for completeness. When the department determines that the person or persons identified in the application meet all criteria of this rule, the department will place that person or persons on the list of certified persons.

(b) The department will maintain a current list of all persons certified under this article. This list will be available to the public upon request and will be available electronically on the department's web site.

(c) An entity that employs persons certified under this article may be listed on the list of certified persons as long as each certified person remains qualified for certification. Such an entity is responsible for providing complete and accurate information showing how the entity should be described on the list of certified persons.

(d) The department may remove a person from the list of certified persons who:
(1) falsifies or misrepresents any information in the application for certification;
(2) fails to continue to meet the certification criteria in this rule;
(3) fails to carry out the duties of a certified person described in section 5 of this rule; or
(4) submits a written request for removal from the list to the address in section 3(b) of this rule.

(Solid Waste Management Board; 329 IAC 17-4-4)

329 IAC 17-4-5 Duties of a certified person

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 5. A certified person must do all of the following:

(1) Conduct an assessment of the contaminated property to determine the types and levels of contamination present, including contamination in the septic system or sewage disposal system.

(2) Notify the local health officer that decontamination will be conducted at that location.

(3) Supervise decontamination of the property, including the septic system and sewage disposal system.

(4) 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.

(5) When decontamination is complete, inspect the contaminated property in accordance with section 6 of this rule.

(4) Certify 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 or determined under subsection 6(b) of this rule.

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

(7) 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, 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.

(Solid Waste Management Board; 329 IAC 17-4-5)

329 IAC 17-4-6 Inspection of contaminated property

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 6. (a) Following decontamination, the certified person shall inspect the contaminated property for any remaining chemicals used in the illegal manufacture of a controlled substance as follows:

(1) Use the sampling procedures described in “Guidance and Standards for Cleanup of Illegal Drug-Manufacturing Sites,” section 4 and appendices C through F, prepared for the Alaska Department of Environmental Conservation by Ecology and Environment, Inc., revised November 22, 2004, available from IDEM Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2241 or on-line at http://www.dec.state.ak.us/spar/perp/docs/druglab_guidance.pdf, as follows:

(A) The term “property owner” means the certified person wherever it occurs.

(B) The term “ADEC” means the department wherever it occurs.

(C) References to “laboratory-specific methods” mean the analytical methods specified in Table 1.

(D) References to “qualified environmental sampler” or “qualified sampler” mean the certified person.

(E) Delete the first three (3) paragraphs of section 4.

(F) Delete the first paragraph of subsection 4.1.

(G) Delete subsection 4.3.2 PID/FID VOC Survey. A certified person may use this method for assessment but one (1) of the methods listed in Table 1 must be used to certify decontamination.

(H) All sampling must be coordinated with the laboratory used for analysis.

(I) The wipe-sampling protocols in appendix C may be used for any controlled substance.

(2) Using the analytical methods listed in Table 1, determine if the levels of

chemicals used in the illegal manufacture of a controlled substance are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Decontamination level
Methamphetamine ¹	0.1 µg/100cm ²
Ephedrine ¹	0.1 µg/100cm ²
Pseudoephedrine ¹	0.1 µg/100cm ²
LSD (lysergic acid diethylamide) ¹	0.1 µg/100cm ²
Ecstasy (3,4-methylenedioxy-methamphetamine)(MDMA) ¹	0.1 µg/100cm ²
Volatile organic compounds ²	<1 ppm
Corrosives ³	pH 6-8
Mercury (air) ⁴	0.2 µg/m ³
Lead (surface) ⁵	< 40 µg/ft ²

¹ Analyze for this contaminant using 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 an equivalent method acceptable to the department.

² Volatile organic compounds include but are not limited to acetone, benzene, ether, freon, hexane, isopropanol, methanol, toluene, and xylene. This standard is for air monitoring only and does not apply to septic tanks. Sample and analyze for these contaminants using Compendium Method TO-14A, “Determination of Volatile Organic Compounds (VOCs) In Ambient Air Using Specially Prepared Canisters With Subsequent Analysis by Gas Chromatography,” or Compendium Method TO-15 “Determination of Volatile Organic Compounds (VOCs) In Ambient Air Using Specially Prepared Canisters and Analyzed by Gas Chromatography/Mass Spectroscopy (GC/MS),” from “Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air, Second Edition” (EPA/625/R-96/010b), January 1997, available from the National Technical Information Service, Springfield, Virginia 22161, NTIS Order Number: PB99-172355. “Ppm” means parts per million.

³ Corrosives include but are not limited to hydrochloric acid, sulfuric acid, sodium hydroxide, anhydrous ammonia, phosphoric acid, and muriatic acid. Analyze for corrosives using Method 9040C, 9041A, or 9045D from SW-846.

⁴ The level for lead applies only if the amalgam or phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used. Analyze for lead using Method 6010 or 6020 from SW-846.

⁵ The level for mercury applies only if the amalgam or phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used. This level is the final (1999) Minimal Risk Level for mercury determined by the Agency for Toxic Substances and Disease Registry. Analyze for mercury using a mercury vapor analyzer calibrated in accordance with the manufacturer’s specifications. The mercury vapor analyzer must have a detection limit of 0.1 µg/m³ or lower.

(b) Analytical methods and decontamination levels for chemicals used in the

illegal manufacture of a controlled substance that are not listed in Table 1 will be determined by consultation between the certified person, the department, and the state department of health, using available scientific and health information relevant to that substance.

(c) Nothing in this section may be construed to prohibit independent third-party validation of analytical data. *(Solid Waste Management Board; 329 IAC 17-4-6)*

329 IAC 17-4-7 Certificate of decontamination

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

Sec. 7. (a) When the final decontamination levels listed in Table 1 or determined under subsection 6(b) of this rule have been met, the certified person shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be in the form shown in Figure 1.

(b) The certified person shall attach copies of the analytical reports from all post-decontamination testing to the certificate of decontamination.

(c) The certified person shall provide a copy of the certificate of decontamination and the analytical reports to the local health officer.

(d) A certified person shall make records and documents relevant to decontaminations performed by that certified person available to the department and the local health officer upon request for a period of five (5) years after the certificate of decontamination has been issued.

(e) The person who signs the certificate of decontamination shall maintain professional liability insurance in the amount of at least one million dollars (\$1,000,000).

CERTIFICATE OF DECONTAMINATION

Under 329 IAC 17

I certify that I have decontaminated or supervised decontamination of the property described below, based on. Following decontamination, I inspected the property for all of the contaminants identified in my initial assessment of the property in accordance with 329 IAC 17-4-6. I certify that the property described below met all applicable decontamination levels listed in 329 IAC 17-4-6, Table 1, at the time of sampling, as evidenced by the attached analytical reports.

Address: _____

City: _____ County: _____

Legal description of property:

Results of Post-Decontamination Testing

Date and time of post-decontamination sampling: _____

The levels observed during post-contamination testing were:

Chemicals identified during the initial assessment	Decontamination levels in 329 IAC 17-4-6, Table 1	Highest observed levels for all samples
Methamphetamine	0.1 µg/100cm ²	
Ephedrine	0.1 µg/100cm ²	
Pseudoephedrine	0.1 µg/100cm ²	
LSD (lysergic acid diethylamide)	0.1 µg/100cm ²	
Ecstasy	0.1 µg/100cm ²	
Volatile organic compounds	<1 ppm	
Corrosives	pH 6-8	
Mercury	0.2 µg/m ³	
Lead	< 40 µg/ft ²	

Name of certified person: _____

Signature: _____ Date: _____

Figure 1.

(Solid Waste Management Board; 329 IAC 17-4-7)

Notice of Public Hearing

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on **March 21, 2006**, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed new rules at 329 IAC 17.*

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

Additional information regarding this action may be obtained from Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, 100 N. Senate Avenue, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H Palin
Assistant Commissioner
Office of Land Quality