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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #07-183

**DEVELOPMENT OF AMENDMENTS TO RULES AT [329 IAC 9](#) CONCERNING ADDITIONAL MEASURES TO PROTECT GROUND WATER**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [329 IAC 9](#) concerning additional measures to protect ground water.

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 9](#).

**AUTHORITY:** [IC 4-22-2](#); [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-14-9](#); [IC 13-15-2](#); [IC 13-19-3-1](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); [IC 13-30-2](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

**Basic Purpose and Background**

The Federal Energy Policy Act of 2005, Public Law 109-58, effective August 8, 2005, contained under Subtitle B the Underground Storage Tank Compliance Act. Under Section 1530 of the Act, Congress requires additional measures to protect ground water by requiring, at a minimum, one of the following:

1. Each new underground storage tank or piping connected to any such new tank, installed after February 8, 2007, or any existing underground storage tank or existing piping connected to such existing tank, that is replaced after February 8, 2007, must be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well; or
2. A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank.

Accordingly, this rulemaking is required so that Indiana's underground storage tank program may maintain federal funding and meet the requirements of federal law.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Requires each new underground storage tank or piping connected to any such new tank, installed after February 8, 2007, or any existing underground storage tanks or connected piping, that is replaced after February 8, 2007, to be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.

Is this alternative imposed by federal law or is there a comparable federal law? Yes.

If it is a federal requirement, is it different from federal law? No.

If it is different, describe the differences. Not applicable.

Alternative 2. Requires a person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.

Is this alternative imposed by federal law or is there a comparable federal law? Yes.

If it is a federal requirement, is it different from federal law? No.

If it is different, describe the differences. Not applicable.

Alternative 3. Requires new connected piping installed after February 8, 2007, or any existing connected piping, that is replaced after February 8, 2007, to be secondarily contained and monitored for leaks and requires a person that manufactures an underground storage tank or piping for an underground storage tank system to maintain product pollution liability insurance for 30 years and a person that installs an underground storage tank system to maintain evidence of financial responsibility (practice, or project liability insurance) for 10 years in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or

installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank. There would also be a requirement for the owner/operator of a leaking underground storage tank to make a determination of the responsible party regarding a release and document that the responsibility for the release does not lie with the installer or manufacturer prior to applying for payment under the Indiana excess liability trust fund. This alternative would not limit secondary containment to new or replaced connected piping within 1,000 (one thousand) feet of a municipal water supply well or potable drinking water well.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

Is this alternative imposed by federal law or is there a comparable federal law? This alternative would accomplish the objective of the federal law, i.e., additional measures to protect ground water from contamination.

If it is a federal requirement, is it different from federal law? Yes.

If it is different, describe the differences. It requires both secondary containment for piping (but not tanks) and financial responsibility of installers and manufacturers.

### **Applicable Federal Law**

The Federal Energy Policy Act of 2005, Public Law 109-58, effective August 8, 2005, contained under Subtitle B the Underground Storage Tank Compliance Act. Under Section 1530 of the Act, Congress requires additional measures to protect ground water.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. There would be a cost for secondary containment of piping and underground storage tanks. The total cost for secondary containment is about \$14,000 per tank and associated piping, and there are approximately 60-65 new or replaced tanks installed per year in Indiana. This would total \$840,000 - \$910,000 per year and for seven years it would equal \$5,888,000- \$6,370,000. Approximately half of all tanks and 99% of all connected piping currently installed every year is voluntarily secondarily contained already, so the final cost is \$1,962,666 - \$2,123,333 over seven years and that is approximately 1/3 of the seven year total cost.

Potential Fiscal Impact of Alternative 2. There are approximately 12 installers that work in Indiana and 100 manufacturers that sell tanks and piping that are installed in Indiana. The cost of a policy for \$1,000,000 per occurrence and \$2,000,000 annual aggregate would be \$5,000-\$15,000 for an installer and approximately \$25,000-\$100,000 for a manufacturer. The insurance cost per year to the installers and manufacturers would be \$2,560,000-\$11,800,000 with the total for seven years being \$17,920,000-\$82,600,000.

Potential Fiscal Impact of Alternative 3. There would be a cost for secondary containment of piping. The total cost for secondary containment is about \$5,000 for connected piping, and there are approximately 60-65 new or replaced connected pipings installed per year in Indiana. However, about 99% of all connected piping currently installed or replaced every year is voluntarily secondarily contained so the final cost is approximately \$0.

There are approximately 12 installers that work in Indiana and 100 manufacturers that sell tanks and piping that are installed in Indiana. The cost of an insurance policy for \$1,000,000 per occurrence and \$2,000,000 annual aggregate would be \$5,000-\$15,000 for a practice or project liability insurance policy for a tank and piping installer and approximately \$25,000-\$100,000 for a product pollution liability insurance policy for a tank and piping manufacturer. The insurance cost per year to the installers and manufacturers would be \$2,560,000-\$11,800,000 with the total for seven years being \$17,920,000-\$82,600,000.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program 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 the CTAP program, the monthly CTAP newsletter, and other resources available can be found at [www.in.gov/idem/ctap](http://www.in.gov/idem/ctap).

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 N. Senate Avenue  
W-041  
Indianapolis, IN 46204-2251  
(317) 232-8578  
[selyusuf@idem.in.gov](mailto:selyusuf@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01- IGCN 1301  
100 N. Senate Avenue  
Indianapolis, IN 46204-2251

### Public Participation and Workgroup Information

A workgroup is not planned for this rulemaking, although meetings have been held by the department with interested parties to discuss the rulemaking.

### STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

### REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The potential fiscal impact of the alternative ways to achieve the purpose of the rule.

Mailed comments should be addressed to:

#07-183(SWMB) [2007 UST Change Rule]

Marjorie Samuel

Rules, Outreach, and Planning Section

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 IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may also be submitted by facsimile to the IDEM fax number at (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 Marjorie Samuel in the Rules, Outreach and Planning Section at (317) 232-7995.

### COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by April 13, 2007.

Additional information regarding this rulemaking action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce H. Palin

Assistant Commissioner

Office of Land Quality

*Posted: 03/14/2007 by Legislative Services Agency*

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