
TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-183

DEVELOPMENT OF AMENDMENTS TO RULES AT [329 IAC 9](#) CONCERNING ADDITIONAL PROTECTION FOR GROUND WATER PURSUANT TO THE FEDERAL ENERGY POLICY ACT OF 2005**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) solicited public comment on amendments to [329 IAC 9](#) concerning additional measures to protect ground water through a First Notice published on March 14, 2007. IDEM now solicits public comment on the addition of a requirement that each new installation of a motor fuel dispenser system must include under-dispenser spill containment.

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 13-14-9](#); [IC 13-15-2](#); [IC 13-19-3](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); [IC 13-30-2](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

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.

Alternative 4. 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 feet of a municipal water supply well or potable drinking water well. This alternative would also add a requirement that each installation of a new motor fuel dispenser system must include under-dispenser spill containment.

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, that is, 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. It also requires that each installation of a new motor fuel dispenser system must include under-dispenser spill containment.

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 4. 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.

The cost for under-dispenser spill containment is approximately \$500 per unit, and there are approximately 10 new motor fuel dispenser systems installed per year in Indiana. This is a total of \$5,000 per year and \$35,000 for the seven year period.

Small Business Assistance Information

IDEM established a Compliance and Technical Assistance Program (CTAP) under [IC 13-28-3](#). This 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.

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 North Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn C. West, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana).

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.

Mailed comments should be addressed to:
#07-183(SWMB) UST Change Rule 2007
Marjorie Samuels
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate, Room 1101
Indianapolis, Indiana 46204

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 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 Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 8, 2007.

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

Bruce Palin
Assistant Commissioner
Office of Land Quality

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