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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #06-147

**DEVELOPMENT OF NEW RULES CONCERNING A PRIORITY RANKING SYSTEM FOR HAZARDOUS SUBSTANCES RESPONSE SITES AT [329 IAC 7.1](#)**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at [329 IAC 7.1](#) concerning a priority ranking system for hazardous substances response sites. By this notice, IDEM is soliciting public comment on the draft rule language. [329 IAC 7](#) is proposed to be repealed. 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: June 1, 2006, Indiana Register (29 IR 3139).

Continuation of First Notice of Comment Period: April 18, 2007, Indiana Register (DIN: [20070418-IR-329060147FCA](#)).

**CITATIONS AFFECTED:** [329 IAC 7.1](#).

**AUTHORITY:** [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

**Basic Purpose and Background**

This rule will establish simple procedures and clear criteria for determining the commissioner's (the department's) priorities in ranking hazardous substances response sites. The new rule should allow the department to maximize departmental staff time and resources on hazardous substances response sites that pose the most serious threats to human health and the environment.

The new criteria would also make the priority ranking system consistent with other site ranking programs, such as the leaking underground storage tank program, and will refer to the risk-based standards for remediation and closure of the hazardous substances response sites.

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed Under Federal Law**

While the prioritization of hazardous substances response sites is a state law requirement and is 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.

**Potential Fiscal Impact**

There will be no fiscal impact to the regulated community or to IDEM.

**Public Participation and Workgroup Information**

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 West, Rules, Planning, and Outreach Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana).

**SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from June 1, 2006, through June 30, 2006, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

**SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF FIRST COMMENT PERIOD**

IDEM requested public comment from April 18, 2007, through May 18, 2007, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the continuation of first notice of public comment period.

**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. Mailed comments should be addressed to:

#06-147(SWMB) [Priority Ranking Rule]  
Marjorie Samuel  
Office of Land Quality

Indiana Department of Environmental Management  
MC 65-45  
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, 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 Development Section at (317) 232-7995.

#### COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 7, 2007.

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

#### DRAFT RULE

SECTION 1. [329 IAC 7.1](#) IS ADDED TO READ AS FOLLOWS:

#### ARTICLE 7.1. PRIORITY RANKING SYSTEM FOR HAZARDOUS SUBSTANCES RESPONSE SITES

##### Rule 1. General Provisions; Definitions

##### [329 IAC 7.1-1-1](#) Applicability and scope

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 1. (a) This article applies to hazardous substances response sites not on the National Priorities List (40 CFR 300, Appendix B (1987 Edition)), not in the leaking underground storage tank program, or not in any other departmental corrective action or remediation program, for which action by the commissioner may be required to:

- (1) prevent the release of a listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant;
- (2) control, contain, isolate, neutralize, remove, store, or dispose of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum, petroleum constituent, or contaminant already released into or on the air, land, or waters of this state; or
- (3) provide another appropriate response.

(b) Nothing in this article shall be construed to limit the authority of the commissioner to:

- (1) respond to the release or threatened release of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum or petroleum constituent, or contaminant; or
- (2) take any other action provided for by statute or rule relating to the release or threatened release of a hazardous substance, petroleum, petroleum constituent, or contaminant.

(Solid Waste Management Board; [329 IAC 7.1-1-1](#))

##### [329 IAC 7.1-1-2](#) Purpose

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 2. This article sets forth criteria and procedures for establishing a priority ranking system (PRS)

by the commissioner for hazardous substances response sites in order that those hazardous substances response sites believed to pose the most significant threat to human health or environment are scheduled first for response and for allocation of department resources.

(Solid Waste Management Board; [329 IAC 7.1-1-2](#))

## Rule 2. Definitions

### [329 IAC 7.1-2-1](#) Definitions

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-11-2](#); [IC 13-25-4-7](#)

Sec. 1. The definitions in [IC 13-11-2](#) and this rule apply throughout this article.

(Solid Waste Management Board; [329 IAC 7.1-2-1](#))

### [329 IAC 7.1-2-2](#) "Community water system" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 2. "Community water system" has the meaning set forth in [327 IAC 8-2-1\(8\)](#).

(Solid Waste Management Board; [329 IAC 7.1-2-2](#))

### [329 IAC 7.1-2-3](#) "Ecologically sensitive area" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 3. "Ecologically sensitive area" means an area with special habitats where the effects of contamination on nonhuman receptors must be considered. The term includes the following:

- (1) National and state parks, forests, and wildlife refuges.
- (2) Designated state nature preserves and other state protected areas.
- (3) Critical habitats for endangered or threatened species, or species of special concern.
- (4) Prairie areas.
- (5) Dune areas.
- (6) Surface waters of the state, including wetlands and free flowing underground streams.
- (7) Riparian areas.
- (8) Breeding areas for:
  - (A) nesting birds;
  - (B) aquatic birds;
  - (C) aquatic mammals;
  - (D) amphibians; or
  - (E) reptiles.
- (9) Migratory areas for:
  - (A) shorebirds;
  - (B) aquatic birds;
  - (C) raptors; or
  - (D) passerines.
- (10) Wintering areas for migratory waterfowl or other aquatic birds.
- (11) Hatcheries.

(12) Reservoir areas.

(13) Recreation areas.

(14) Designated critical biological resource areas.

(Solid Waste Management Board; [329 IAC 7.1-2-3](#))

**[329 IAC 7.1-2-4](#) "Free product" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 4. "Free product" means a regulated substance that is present as a nonaqueous phase liquid or a material at a hazardous substances response site that is in excess of the material's solubility limit.

(Solid Waste Management Board; [329 IAC 7.1-2-4](#))

**[329 IAC 7.1-2-5](#) "Geologically sensitive area" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 5. "Geologically sensitive area" is characterized by conditions that allow contaminants to migrate away from the source area in such a manner that invalidates the assumptions of the soil-to-ground water partitioning model used to calculate the default closure levels under the RISC. The term includes a karst area or a wellhead protection area.

(Solid Waste Management Board; [329 IAC 7.1-2-5](#))

**[329 IAC 7.1-2-6](#) "Hazardous substances response site" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 6. "Hazardous substances response site" or "site" means the location of a release or threat of release of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum or petroleum constituent, or contaminants.

(Solid Waste Management Board; [329 IAC 7.1-2-6](#))

**[329 IAC 7.1-2-7](#) "Maximum contamination level" or "MCL" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 7. "Maximum contamination level" or "MCL" means the levels developed under Section 1412 of the Safe Drinking Water Act, codified under 40 CFR 141.

(Solid Waste Management Board; [329 IAC 7.1-2-7](#))

**[329 IAC 7.1-2-8](#) "Notification of release" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 8. "Notification of release" means any of the following received by the department:

- (1) An initial incident report or spill report as required by [327 IAC 2-6.1](#).
- (2) An initial site characterization (ISC).
- (3) Further site investigation (FSI).

(Solid Waste Management Board; [329 IAC 7.1-2-8](#))

[329 IAC 7.1-2-9](#) "No further action letter" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 9. "No further action letter" means a letter stating one (1) of the following:

(1) IDEM determines the site:

- (A) meets RISC closure levels for soil or ground water, or both, appropriate for land use based on all the information available to the department; or
- (B) does not meet RISC closure levels appropriate for the land use and an environmental restrictive covenant is placed on the site and recorded with the appropriate county office of the recorder; and no further action is warranted or necessary.

(2) Remediation has been completed so that no further action is warranted or currently necessary at the site.

(Solid Waste Management Board; [329 IAC 7.1-2-9](#))

[329 IAC 7.1-2-10](#) "Off-site" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 10. "Off-site" means all areas outside of the property boundary or the boundary of properties where a release of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum or petroleum constituent, or contaminants has occurred.

(Solid Waste Management Board; [329 IAC 7.1-2-10](#))

[329 IAC 7.1-2-11](#) "On-site" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 11. "On-site" means all areas within the property boundary or the boundary of properties where a release occurred of a listed or characteristic hazardous waste or a hazardous waste constituent, a hazardous substance or hazardous substance constituent, petroleum or petroleum constituent, or contaminants has occurred.

(Solid Waste Management Board; [329 IAC 7.1-2-11](#))

[329 IAC 7.1-2-12](#) "Remediation work plan" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-](#)

[4-7](#)

Affected: [IC 13-25-4-7](#)

**Sec. 12. "Remediation work plan":**

(1) means a plan of action proposed to the department by the responsible party; and

(2) states in detail the:

(A) steps;

(B) procedures; and

(C) methods;

that will be taken to remediate the site, including a timeline for those steps.

(Solid Waste Management Board; [329 IAC 7.1-2-12](#))

**[329 IAC 7.1-2-13](#) "Risk integrated system of closure" or "RISC" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

**Sec. 13. "Risk integrated system of closure" or "RISC" means a nonrule policy document presented to the solid waste management board to facilitate and set closure standards at sites requiring remediation.**

(Solid Waste Management Board; [329 IAC 7.1-2-13](#))

**Rule 3. Incorporation by Reference**

**[329 IAC 7.1-3-1](#) Incorporation by reference**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

**Sec. 1. (a) For purposes of this article, the board incorporates herein by reference 40 CFR 300 (1987 Edition), National Oil and Hazardous Substance Pollution Contingency Plan (hereinafter "National Contingency Plan").**

**(b) Copies of the Code of Federal Regulations (CFR) can be obtained from the Government Printing Office, Washington, D.C. 20402.**

(Solid Waste Management Board; [329 IAC 7.1-3-1](#))

**Rule 4. Assessment of Hazardous Substances Response Sites**

**[329 IAC 7.1-4-1](#) Ranking**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

**Sec. 1. (a) The department shall utilize an objective method to assess, on the basis of available information, the relative potential threat to human health or the environment from hazardous substances response sites or releases. The method used to assess hazardous substances response sites or releases will be called the priority ranking system (PRS).**

(b) After the department receives the notification of release, the site or release will be prioritized under the PRS and placed in the appropriate priority as follows:

(1) If the department determines, based on the notification of a release submitted to the department, that one (1) of the following has occurred, then the site or release is considered a high priority:

(A) Vapors from a listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant are detected in a habitable structure or other structure such as a utility conduit, storm sewer, or sanitary sewer at a level that exceeds:

- (i) the chronic, long term risk-based exposure for a contaminant of concern; or
- (ii) ten percent (10%) of the contaminant of concern's lower explosive limit (LEL).

(B) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in surface water or a drinking water well at or above MCLs or RISC residential default cleanup levels for ground water.

(C) Free product is present.

(D) An ecologically sensitive area or a geologically sensitive area is detrimentally affected by the release.

(E) Ground water contaminated by the release is located within three thousand (3,000) feet of a fixed radius of a wellhead or a one (1) year time of travel of a delineated, approved wellhead protection area for a community water system.

(F) Hazardous substances are identified in surface soil, which has a direct soil contact exposure pathway, at levels exceeding RISC residential default cleanup levels.

(2) If the department determines, based on the notification of a release submitted to the department, that one (1) of the following has occurred, then the site or release is considered a medium priority:

(A) None of the conditions set forth in subdivision (1) are applicable.

(B) Ground water contaminated by the release is located within a five (5) or ten (10) year time of travel of a delineated, approved wellhead protection area for a community water system or within three thousand (3,000) feet of a fixed radius of a wellhead.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in ground water at any concentration.

(3) If the department determines, based on the notification of a release submitted to the department, that one (1) of the following has occurred, then the site or release is considered a low priority:

(A) None of the conditions set forth in subdivisions (1) and (2) are applicable.

(B) No hazardous substance, petroleum, petroleum constituent, or contaminants are detected in ground water.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in soil, which does not have a direct soil contact exposure pathway, at concentrations exceeding RISC residential default cleanup levels.

(c) For purposes of this section, "surface soil" and "direct soil contact exposure pathway" are defined or further explained in RISC.

(Solid Waste Management Board; [329 IAC 7.1-4-1](#))

## Rule 5. Transition

[329 IAC 7.1-5-1](#) Transition to the prioritization procedure under this rule

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 1. All hazardous substances response sites or releases will be prioritized according to [329 IAC 7.1-4](#) within one hundred eighty (180) days of the effective date of this article.

(Solid Waste Management Board; [329 IAC 7.1-5-1](#))

## Rule 6. Reprioritization

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**[329 IAC 7.1-6-1](#) Reprioritization of sites or releases**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 1. (a) The ranking of sites or releases under the PRS will be a dynamic process, and the rank may be subject to change based on:

- (1) site circumstances;
- (2) receipt of additional information; or
- (3) other relevant factors.

However, the partial implementation of remedial action at sites selected for such action will not be considered alone as a circumstance requiring a reprioritization of the site.

(b) Factors that may result in the reprioritization of a site include any of the following:

(1) Any action taken that:

- (A) is verifiable by the department and consistent with the ultimate remedial action appropriate for the site; and
- (B) significantly controls or reduces the source of the release or threat of release.

(2) Receipt of information concerning the actual or imminent release of a hazardous substance, petroleum, petroleum constituent, or contaminant previously believed to be contained or controlled.

(3) Review of the initial site characterization, further site investigation, a corrective action progress report, or a remediation work plan.

(c) Actions taken at the site merely to abate the risk to human health or the environment and that do not control, reduce, or eliminate the source of the hazardous substance, petroleum, petroleum constituent, or contaminant being released or threatened to be released will not be considered alone as a basis for reprioritizing the release or the site.

*(Solid Waste Management Board; [329 IAC 7.1-6-1](#))*

## Rule 7. Completion of Remediation

### **[329 IAC 7.1-7-1](#) Completion of remediation**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)

Sec. 1. Upon the completion of remediation at a site as determined by the commissioner, the commissioner will provide a no further action letter to the:

- (1) owner of the site; or
- (2) person responsible for remediation of the release.

Sites that are issued a no further action letter will no longer have a priority ranking.

*(Solid Waste Management Board; [329 IAC 7.1-7-1](#))*

## Rule 8. Hazard Removals

### **[329 IAC 7.1-8-1](#) Hazard removals**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#)

Affected: [IC 13-25-4-7](#)



**Sec. 1. Irrespective of whether a hazardous substances response site has been prioritized under the PRS, the commissioner may at any time undertake or order removal action at any hazardous substances response site if such action is consistent with the National Contingency Plan.**

*(Solid Waste Management Board; [329 IAC 7.1-8-1](#))*

SECTION 2. [329 IAC 7](#) IS REPEALED.

[Notice of Public Hearing](#)

*Posted: 08/08/2007 by Legislative Services Agency*

An [html](#) version of this document.