
TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-468

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO [329 IAC 9](#) CONCERNING DELIVERY PROHIBITION REQUIREMENTS MANDATED BY THE UNDERGROUND STORAGE TANK COMPLIANCE ACT, PART OF THE ENERGY POLICY ACT OF 2005

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to [329 IAC 9](#) concerning delivery prohibition requirements mandated by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005.

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 13-14-9-8](#); [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The Federal Energy Policy Act of 2005 contains the Underground Storage Tank (UST) Compliance Act, which requires major changes to state UST programs. The original legislation that created the UST program is Subtitle I of the Solid Waste Disposal Act. This proposed rulemaking addresses the fuel delivery prohibition requirement of the UST Compliance Act.

The department believes it currently has the authority to implement the fuel delivery prohibition program; however, going forward with a rule will provide clear, concise standards to help assure consistency.

On August 8, 2007, it will be unlawful to deliver regulated substance to an "ineligible" tank. States, including Indiana, that receive federal funding under Subtitle I must implement the delivery prohibition requirement by August 8, 2007, to comply with their statutory requirements for funding. The delivery prohibition requirement prohibits the delivery, deposit, or acceptance of regulated substance to an underground storage tank that has been determined to be ineligible for such delivery, deposit, or acceptance. The state agency determines eligibility based on compliance with the state's environmental laws and regulations.

Section 9012 of the Act also requires U.S. EPA to develop and publish guidelines that describe the minimum processes and procedures for the delivery prohibition. U.S. EPA published those guidelines in August 2006.

A state implements the Energy Act's guidelines by:

Having the authority to prohibit delivery, deposit, or acceptance of regulated substance to an underground storage tank for both equipment and operational violations; and

Developing processes and procedures for a delivery prohibition program that, at a minimum, meets the requirements in these guidelines. States may choose to be more stringent than these minimum requirements.

This rule will include the following five categories of processes and procedures required by the Energy Policy Act of 2005:

- Criteria for determining which underground storage tanks are ineligible for delivery, deposit, or acceptance of regulated substance;
- Mechanism(s) for identifying ineligible underground storage tanks;
- Process(es) for reclassifying ineligible underground storage tanks as eligible for delivery, deposit, or acceptance of regulated substance;
- Process(es) for providing adequate notice to underground storage tank owners and operators and regulated substance deliverers that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of regulated substance; and
- Delineation of a process for the application of delivery prohibition in rural and remote areas. U.S. EPA recognizes that states with existing delivery prohibition programs may already have communicated these requirements to tank owners and operators and regulated substance deliverers.

Definitions will be added to clarify the required processes. Definitions already in [329 IAC 9](#) may be moved to different sections so the definitions can continue to be in alphabetical order.

Alternative 1. A rule to require the prohibition of delivery of regulated substance to a tank that is out of compliance.

- 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? 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. Do the prohibition of delivery of regulated substance to a tank that is out of compliance by nonrule policy.

- 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? No, this alternative could not require prohibition of delivery.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

The UST Compliance Act requires major changes to federal and state UST programs. The original legislation that created the UST program is Subtitle I of the Solid Waste Disposal Act. Subtitle B of the Energy Policy Act of 2005 amends Subtitle I.

This rulemaking addresses the delivery prohibition requirement of the UST Compliance Act. On August 8, 2007, it will be unlawful to deliver regulated substance to an ineligible tank.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. For owners and operators that are in compliance with [329 IAC 9](#), this rulemaking will have no economic impact.

Potential Fiscal Impact of Alternative 2. For owners and operators that are in compliance with [329 IAC 9](#), this rulemaking will have no economic impact.

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

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

Christina Lowry
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 234-1191
clowry@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
(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 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:

#07-468(SWMB) (Fuel Delivery Prohibition Rule)
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Ave.
MC 65-45
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 the Rules, Planning, and Outreach Section at (317) 232-7995 or (800) 451-6027 (in Indiana).

COMMENT PERIOD DEADLINE

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

Additional information regarding this rulemaking 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).

Bruce Palin
Assistant Commissioner
Office of Land Quality

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