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**TITLE 329 SOLID WASTE MANAGEMENT BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #08-422

**DEVELOPMENT OF NEW RULES CONCERNING ENVIRONMENTAL ASSESSMENT, CLEANUP, AND CLOSURE OF CONTAMINATED ENVIRONMENTAL MEDIA****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [329 IAC 17](#) for use in the assessment, cleanup, and closure of contaminated soil, sediments, and water. The 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 17](#).

**AUTHORITY:** [IC 13-12-3-1](#); [IC 13-12-3-2](#); [IC 13-14-8](#); [IC 13-19-3](#); [IC 13-25-5-8.5](#); [IC 13-25-5-23](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

This rulemaking would establish consistent general standards, goals, and preferences under which the assessment, cleanup, and closure of contaminated soil, sediments, or water can be performed. Property owners or other persons responsible for the release of contaminants (defined in [IC 13-11-2-42](#)) are required, by various IDEM programs, to take steps to clean up the contaminants and to prevent harm to human health or the environment. Indiana law provides that contamination be cleaned up to background or naturally occurring levels or to risk-based levels. Risk-based levels are centered on reducing the contaminants to a level of exposure that ensures the health and safety of the population. The IDEM currently provides a framework for risk-based environmental assessments and closure in the Risk Integrated System of Closure (RISC) nonrule policy document.

Rules will be based on environmental risk assessment principles to assure that sites are cleaned up or, if cleanup to risk-based closure levels is impracticable, closed with controls or restrictions such as land or water use restrictions so as to meet a level of exposure to remaining contaminants that assures continued protection of human health and the environment. Consistent with the charge of [IC 13-12-3-1](#), the preference will be for cleanups that provide for the most beneficial use of the air, land, and water resources of Indiana.

Approximately 30 other states have rules regarding risk-based assessment, cleanup, and closure of contaminated sites.

The Indiana rules for risk-based remediation and closure would be used, to varying degrees, by the following programs that provide oversight and closure approval for such industrial, commercial, or residential sites:

- (1) Voluntary Remediation Program (VRP).
- (2) Leaking Underground Storage Tanks (LUST).
- (3) State Cleanup.
- (4) Brownfields.
- (5) Superfund.
- (6) Defense Environmental Restoration Program (DERP).
- (7) Hazardous Waste Closure and Corrective Action (Resource Conservation and Recovery Act (RCRA)).

Utilization of environmental risk assessment methodology provides flexible approaches and encourages creative solutions for site cleanup. When the various IDEM programs utilize a risk-based closure system, the opportunity for consistent decision making throughout the IDEM programs is maximized.

These rules will include topics that will continue to be addressed in detail in guidance documents issued by the department. The IDEM anticipates the rulemaking will address the following:

- Definitions of critical terms.
- Applicability of the rules to the existing IDEM programs.
- Transition into rules; transition from guidance to rules.
- Program specific triggers that cause a site to become subject to the rules.
- General requirements for, and applicability of, environmental site assessment activities including presampling, site screening, and determining nature and extent of contamination.
- Requirements for timely response actions to mitigate hazards in situations where contamination may pose an imminent and substantial threat to public safety, human health, or the environment.
- Risk-based methodology for calculating contaminant-specific closure levels; default versus site-specific closure levels; land use-specific closure levels; and applicability of closure levels.
- Required submittals to the IDEM.

- Requirements for the specified submittals to the IDEM, including completeness, time frames, and reasons for rejection; reporting requirements and site activity notifications.
- Requirements for environmental sampling and reports regarding sampling.
- Circumstances under which submission of a community relations plan would be required.
- Criteria for demonstration of impracticability to clean up contamination to applicable closure levels and selection of remedial alternatives, including practicability, long-term reliability, effectiveness, and implementation risk.
- Criteria for the IDEM to apply in approving or denying proposed remediation plans, including a hierarchy, or order of preference, for closure that prefers treatment or removal of contaminants to the extent practicable to achieve a permanent remedy before administrative or engineering exposure prevention options may be used to address remaining contaminants.
- Standards for the IDEM to apply in approving or denying requests for closure and the various related mechanisms for documenting closure and imposing any conditions of closure such as land use restrictions or engineering controls to prevent human exposure to contaminants.
- Requirements for post-closure reporting, monitoring, inspection, certification, maintenance, and financial assurance to prevent human exposure to contaminants, for sites that have closed with an environmental restrictive covenant (ERC) or other controls.
- Credential or experience requirements for persons completing work or preparing submittals related to assessment, cleanup, and closure.

#### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Putting the department's general risk-based closure standards into rule.

- 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 is not imposed by federal law and there is no comparable federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Continuing to use guidance for cleanup and closure of contaminated sites.

- 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 is not imposed by federal law and there is no comparable federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

There is no comparable federal law.

#### **Potential Fiscal Impact**

Potential fiscal impact of all alternatives: There is no fiscal impact to the regulated community with this rulemaking. The cleanup and closure of contaminated soil, sediments, and water is already statutorily required by the programs that utilize RISC. This rulemaking establishes consistent general standards, goals, and preferences under which these assessments, cleanups, and closures can be performed.

#### **Small Business Assistance Information**

The 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/compliance/ctap/index.html](http://www.in.gov/idem/compliance/ctap/index.html)

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

Alison Surface  
IDEM Compliance and Technical Assistance Program - OPPTA  
100 North Senate Avenue, MC 60-04  
Indianapolis, IN 46204-2251  
(317) 234-1191 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01– IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[mtretter@idem.in.gov](mailto:mtretter@idem.in.gov)

### **Public Participation and Workgroup Information**

The IDEM will establish a workgroup with representation from all interested persons to address the issues presented by this rulemaking. If you are interested in participating, please contact Lydia Kuykendal, Rules, Outreach, and Planning Section, Office of Land Quality at (317) 234-5345, 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, the 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 submission of comments on the fiscal impact of this rulemaking.

Mailed comments should be addressed to:

#08-422(SWMB) [Risk-based closure Rulemaking]  
Marjorie Samuel  
Rule, Outreach, and Planning Section  
Office of Land Quality, MC 65-45  
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 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, Outreach, and Planning Section at (317) 232-7995.

### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 11, 2008.

Additional information regarding this action may be obtained from Lydia Kuykendal, Rules, Outreach, and Planning Section, Office of Land Quality, (317) 234-5345, or (800) 451-6027 (in Indiana).

Bruce H Palin  
Assistant Commissioner  
Office of Land Quality

*Posted: 06/11/2008 by Legislative Services Agency*  
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