

**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #08-684

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE UNDERGROUND STORAGE TANK EXCESS LIABILITY TRUST FUND (ELTF)****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules of the Underground Storage Tank Financial Assurance Board at 328 IAC. As it has been four years since Title 328 was amended, IDEM has determined that the underground storage tank (UST) system owners and operators would benefit from a cost adjustment for investigation and remediation activities reimbursable from the ELTF. This proposed amendment also allows for the annual adjustment of mileage and labor rates. It proposes the addition of and modification of several definitions to clarify the rule. There are other proposed changes that will expedite payment from the fund. IDEM seeks comment on the affected citations listed and any other provisions of Title 328 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 328 IAC.**AUTHORITY:** [IC 13-14-9](#); [IC 13-23-8-1](#); [IC 13-23-8-4.5](#); [IC 13-23-8-5](#); [IC 13-23-11-7](#).**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The ELTF was established under [IC 13-23-7](#) to provide financial responsibility and a source of corrective action funds for owners and operators of USTs. In addition to the reimbursable cost adjustments, this proposed amendment would also clarify certain definitions including "substantial compliance" as it relates to the ELTF and a "fund qualifying occurrence". It would clarify actions and activities for which reimbursement may be sought from the fund. It would establish time limits for the submission of claims once a site has achieved a no further action (NFA) status and further define UST "system" and UST "closure" as it relates to the ELTF. Finally, this proposal clarifies personnel classification activity descriptions and task and rates for which attorneys may seek reimbursement. Proposals for clarification or amendment of any other provision of the rule are included in the scope of this notice. IDEM seeks comment on the affected citation listed and any other provisions of Title 328 that may be affected by this rulemaking.

**The Following Specified Changes Will Be Considered Within the Rulemaking:**

- (1) Adding the definitions: "closure", "fund qualifying occurrence", "repeated release", and "system".
- (2) Amending the definitions: "deductible amount", "substantial compliance", and "system".
- (3) Amending the fund access provision to include actions or activities the fund will not pay for.
- (4) Adding a provision for electronic submittal of claims.
- (5) Amending eligibility requirements.
- (6) Clarifying the fund deductible amounts.
- (7) Amending reimbursable costs.
- (8) Disallowed claims may only be submitted for payment consideration twice.

The following information applies to all the preceding specified changes within the rule.

- This change is not an incorporation of federal standards, either by reference or full text incorporation.
- This change is not imposed by federal law, and there is no comparable federal law.
- This change is not different from applicable federal law.

**Applicable Federal Law**

There are no applicable federal rules.

**Potential Fiscal Impact**

This rule does not impose any regulatory requirements on the UST owner or operator but rather places restrictions on what remediation costs qualify for payment from ELTF to the owner or operator. This rule may impact the amount of reimbursement allowed that may be more or less than current payment depending on the site-specific conditions. If the commentor has more specific fiscal impact information, the department is requesting this information.

**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:

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

Alison Surface  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 North Senate Avenue  
W-041  
Indianapolis, IN 46204-2251  
(317) 234-1191  
[asurface@idem.in.gov](mailto:asurface@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
IDEM Small Business Assistance Program Ombudsman  
MC50-01– 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

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross section of stakeholders. Also, an issues workgroup was formed to just discuss the reimbursable costs in the rule.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in 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 submission of comments on the fiscal impact of this rulemaking.

Mailed comments should be addressed to:

#08-684(FAB) (ELTF Change Rule)  
Janet Pittman  
Rules, Planning, and Outreach Section  
Office of Land Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
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 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, Planning, and Outreach Section at (317) 232-8922.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by October 10, 2008.

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).

Bruce H Palin  
Assistant Commissioner  
Office of Land Quality

*Posted: 09/10/2008 by Legislative Services Agency*  
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