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

LSA Document #14-20

**PRIORITY RANKING, INVESTIGATION, REMOVAL, AND REMEDIAL ACTION AT HAZARDOUS SUBSTANCES RESPONSE SITES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 7.1](#) concerning priority ranking, investigation, removal, and remedial action at hazardous substances response sites. 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 7.1](#).

**AUTHORITY:** [IC 4-22-2](#); [IC 13-12-3-2](#); [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-13](#); [IC 13-24-1](#); [IC 13-25-4-5](#).

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

The State Cleanup Program (SCP) was created in 1989 to manage the investigation, removal, and remedial action at contaminated sites that are not included in the federal Superfund Program and do not fit the criteria for the Leaking Underground Storage Tank Program. The SCP oversees investigation, removal, and remedial action at sites contaminated with hazardous substances, as well as petroleum releases at petroleum facilities.

The Hazardous Substances Response Trust Fund, which derives its revenue primarily from a tax on the disposal of hazardous waste and recovery of IDEM oversight costs, provides the funding for the SCP.

This rulemaking proposes to establish standards and program procedures for management of sites that are referred to the SCP. The program has experienced difficulty obtaining adequate information from responsible persons who determine the potential extent of site contamination. In addition, responsible persons have uncertainties about the SCP expectations for reporting site information.

Both the SCP and responsible persons will benefit by establishing requirements and procedures in a rule. Responsible persons will have a clearer understanding of SCP's expectations for information reporting and site management. The SCP will experience fewer problems with responsible persons over information reporting, enforcement, and cost recovery.

This rulemaking will address the following issues:

- Stages of site investigation, removal, and remedial action; for example, "initial site investigation", "further site investigation", and "remedial work plan". These are currently described in IDEM's Remediation Program Guide.
- Information required from responsible persons in the Special Notice letter and the initial site investigation report.
- Circumstances under which further site investigation information is required.
- Remediation work plan and remedial action report requirements.
- Oversight costs that IDEM will seek to recover from responsible persons and the cost recovery process.
- The enforcement process for responsible persons who are not in compliance with SCP requirements.
- The applicability of the immediate removal and independent closure processes.
- The closure process.
- Post-closure requirements and activities, as needed.

Consistent with the main goals of this rulemaking and statutory authorities for the SCP, IDEM may propose amending existing language, adding new definitions, or proposing ancillary procedures or requirements.

Persons and groups who will be affected by this rulemaking include IDEM staff in the SCP, persons responsible for contaminated sites referred to the program, consultants hired to investigate and conduct removal and remedial action at those contaminated sites, and members of the general public potentially affected by contaminated sites.

IDEM seeks comment on the subject matter of this rulemaking and any other related issues.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend [329 IAC 7.1](#) to include a description of the information required to complete each phase of a site investigation, removal and remedial action that is consistent with the information and time frames required for each phase by the Leaking Underground Storage Tank regulations.

- 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. The SCP was modeled on the federal Superfund program established by the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA). However, the SCP is a distinct program created under state 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. Amend [329 IAC 7.1](#) to include a description of the information required to complete each phase of a site investigation, removal, and remedial action that specifies different information and time frames than the Leaking Underground Storage Tank regulations.

- 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? The SCP was modeled on the federal Superfund program established by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). However, the SCP is a distinct program created under state 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 3. No action

- 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. The SCP was modeled on the federal Superfund program established by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). However, the SCP is a distinct program created under state 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 applicable federal law.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative would describe the information required under state statutory authority and remediation guidance for investigation, removal, remedial action, cost recovery, closure, and post-closure concerning sites referred to the SCP. The potential fiscal impact to a responsible person for site investigation, necessary removal, remedial action, and IDEM oversight would be site dependent. However, contaminated sites in the SCP must be appropriately remediated under [IC 13-12-3-2](#), [IC 13-22-13](#), [IC 13-24-1](#), and [IC 13-25-4-5](#), as applicable. The rule would clarify the existing practices and requirements so there should be no increase over existing costs.

Potential Fiscal Impact of Alternative 2. This alternative would describe the information required under state statutory authority and remediation guidance for investigation, removal, remedial action, cost recovery, closure, and post-closure concerning sites referred to the SCP. The potential fiscal impact to a responsible person for site investigation, necessary removal, remedial action, and IDEM oversight would be site dependent. However, contaminated sites in the SCP must be appropriately remediated under [IC 13-12-3-2](#), [IC 13-22-13](#), [IC 13-24-1](#), and [IC 13-25-4-5](#), as applicable. The rule would clarify the existing practices and requirements so there should be no increase over existing costs.

Potential Fiscal Impact of Alternative 3. This alternative would maintain the status quo and would therefore not have any fiscal impact. There also would not be any positive fiscal impact that would come from having rules that provide certainty in what information is required to do a site investigation, removal and remedial action.

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

IDEM established a compliance and technical assistance program (CTAP) 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](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
402 West Washington Street  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Jacob Schpok  
Indiana Small Business Development Center  
One North Capitol, Suite 600  
Indianapolis, IN 46204  
(317) 232-8805

ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell

IDEM Small Business Assistance Program Ombudsman

MC 50-01 IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8587 or (800) 451-6027

snhowell@idem.in.gov

#### Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rule Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

#### 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.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #14-20 State Cleanup Program Rule

Dan Watts

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Mail Code 65-46

Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 233-8903.

- (3) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than February 21, 2014. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel (317) 234-5345 or (800) 451-6027 (in Indiana).

Nancy King, Chief

Rules Development Branch

Office of Legal Counsel

*Posted: 01/22/2014 by Legislative Services Agency*

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