TITLE 329 SOLID WASTE MANAGEMENT DIVISION

FIRST NOTICE OF COMMENT PERIOD
LSA Document #14-69

VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 329 IAC 18 concerning the Environmental Stewardship Program (ESP) and the Comprehensive Local Environmental Action Network Community Challenge Programs (CLEAN). 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 18.

AUTHORITY: IC 13-14-8; IC 13-19-3-1; IC 13-27-8.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In 2007, the applicable environmental boards in existence at that time adopted rules into Title 326, Title 327, and Title 329 to establish the ESP and CLEAN Community Challenge Programs. These programs are performance-based incentive programs for companies and communities that not only meet environmental regulatory requirements but also voluntarily go beyond those requirements to provide even greater protection to the environment and public health. Implementation of these programs by IDEM in the years since they became available has led to identification of rule changes that are intended to update and enhance the programs.

The federal National Environmental Performance Track Program (NEPT) was a voluntary, performance-based program that provided incentives to companies that have gone above and beyond standard regulatory requirements. This federal program no longer exists and references to it or its requirements should be removed from the Indiana ESP rules.

The current rule for members in the CLEAN program requires participants to identify five continuous environmental improvement initiatives for the three year membership term. This rulemaking will consider reducing the number of continuous environmental improvement initiatives to four for the membership term, and, also, consider increasing the term of membership from three to four years for each program. This rulemaking will also consider eliminating the requirement for members to implement an environmental management system (EMS) for participation in CLEAN. The EMS requirement for ESP will remain in effect. This rulemaking will consider expanding the list of entities eligible to enter the CLEAN program to include universities.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Remove references to NEPT.

- 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 (NA).
- If it is different, describe the differences. NA.

Alternative 2. Reduce the number of environmental initiatives for CLEAN program members.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Alternative 3. Increase the term of membership from three to four years in the ESP and CLEAN programs.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Alternative 4. Eliminate the EMS requirement for CLEAN participants.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Alternative 5. Expand the list of entities eligible to enter the CLEAN program.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Alternative 6. Do a combination of any or all of the Alternatives 1 through 5.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Alternative 7. Do no rulemaking thereby keeping the ESP and CLEAN programs unchanged.

- 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.
- If it is a federal requirement, is it different from federal law? NA.
- If it is different, describe the differences. NA.

Applicable Federal Law

At the time Indiana's ESP and CLEAN rules were adopted, the NEPT program provided a basis for some of the rule requirements. However, that federal program is no longer in existence. The remaining rule requirements are of state origin.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative to eliminate references to the NEPT program will have no fiscal impact on members in the ESP and CLEAN programs since the federal program has been out of existence since 2009.

Potential Fiscal Impact of Alternative 2. This alternative will reduce fiscal impact by reducing the number of continuous environmental improvement initiatives that a member is required to plan and implement during each membership term. The reduction in required environmental initiatives will lessen the resources required of participants to plan and implement initiatives as well as IDEM staff in assisting with the planning and approval process of each initiative.

Potential Fiscal Impact of Alternative 3. This alternative will increase the term of membership in the ESP and CLEAN programs from three to four years and, thereby, will lessen fiscal impact to program participants due to the costs associated with preparing a renewal application and will reduce the time spent by IDEM staff processing renewal applications.

Potential Fiscal Impact of Alternative 4. This alternative to remove the EMS requirement as it applies to CLEAN participants will lessen the fiscal impact to program participants and IDEM staff due to the costs associated with the lengthy process of creating and implementing an EMS. IDEM staff typically is involved in both assisting with the preparation of the EMS and the review and approval of the completed documents.

Potential Fiscal Impact of Alternative 5. This alternative to expand the list of eligible CLEAN members to include universities will create no fiscal impact. The ESP and CLEAN programs are voluntary programs providing beneficial incentives to members in exchange for the members' exemplary environmental performance.

Potential Fiscal Impact of Alternative 6. As with doing Alternatives 1 through 5 individually, there is no fiscal impact, or the existing fiscal impact will be lessened, by doing all or some of the alternatives in combination.

Potential Fiscal Impact of Alternative 7. There is no fiscal impact of doing no rulemaking, but the opportunity will be lost to reduce existing requirements and make the ESP and CLEAN programs more compatible to the resources of an increased field of potential participants.

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

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
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
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 MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 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 #14-69 ESP-CLEAN Amendments Title 329
MaryAnn Stevens
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 mstevens@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 email 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 April 18, 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 MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel (317) 232-8635 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

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An html version of this document.