TITLE 329 SOLID WASTE MANAGEMENT DIVISION

SECOND 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 Comprehensive Local Environmental Action Network Community Challenge Program (CLEAN). IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: March 19, 2014, Indiana Register (DIN: 20140319-IR-329140069FNA).

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.

The first notice included a statement that the list of entities eligible to participate in CLEAN would be expanded to include universities. IDEM has reconsidered this expansion idea and decided that colleges and universities would be a better fit with ESP.

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.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

Participation in the ESP and CLEAN programs is entirely voluntary. Program incentives to be added and existing program requirements to be reduced through this rulemaking will provide benefits to participants to outweigh any possible cost of participation, which will not exceed $500,000.

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).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 19, 2014, through April 18, 2014, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comment letters from the following parties by the comment period deadline:

Kerner, Angie, City of Southport (AK)

Shankland, Amy, City of Noblesville Grant Coordinator (AS)
Yeend, Carole, Rush County Solid Waste Management District (CY)

Comment: The proposed changes to the ESP and CLEAN programs are ones that should be made with the exception of the 'do no rulemaking' alternative, which should not be the action taken. (AK, AS, CY)

Response: IDEM does not intend to proceed with the 'do no rulemaking' alternative.

Comment: Alternative 4, which states, "Eliminate the EMS requirement for CLEAN participants." should not be followed because the program participants need the guidelines for the help they provide participants to understand what to do to be in the program. (AK)

Response: An EMS provides a structured and systematic approach for entities to manage environmental aspects. Often used in businesses, especially in the manufacturing sector, an EMS is an effective tool when developed and used consistently. It has been IDEM's experience that local governments often do not have the resources to adequately develop an EMS that is specific to their operations and to utilize it effectively. To make it easier to participate in the program, IDEM proposes to eliminate the requirement of a formal EMS for the CLEAN Program while continuing to provide participants assistance, information, and tools to achieve continuous environmental improvement and to fulfill all requirements of program participation.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. 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 Revision Title 329
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
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) 232-8922.

(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 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, 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 6, 2015. 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).

DRAFT RULE

SECTION 1. 329 IAC 18-1-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-11-2; IC 13-15; IC 13-19

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule **and 329 IAC 18-2:**

(1) "Commissioner", as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.

(2) "Comprehensive Local Environmental Action Network Community Challenge Program" or "CLEAN" means the voluntary state program for units of local government in Indiana that:

(A) demonstrate environmental stewardship; and
(B) strive for continual environmental improvement.
(3) "Department", as defined in IC 13-11-2-51, means the Indiana department of environmental management.
(4) "Entity" means a company, corporation, firm, enterprise, authority, institution, partnership, sole proprietorship, limited liability company, any person as defined in IC 13-11-2-158(a), or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity has one (1) geographic location under:
(A) at least one (1) EMS **for ESP members;** and
(B) the direction of senior management.
(5) "Environmental aspect" means an element of the activities, products, or services of an entity that has the potential to interact with the environment.
(6) "Environmental impact" means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.
(7) "Environmental laws, rules, and regulations", for the purpose of this article, means the system of laws and standards administered by U.S. EPA, the department, or related local government bodies.
(8) "Environmental management system" or "EMS" means a continuous cycle of planning, implementing, reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an entity to:
(A) maintain compliance;
(B) reduce adverse environmental impacts; and
(C) increase operational efficiency.
(9) "Environmental objective" means an environmental goal that is consistent with the environmental policy of an entity.
(10) "Environmental policy" means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.
(11) "Environmental Stewardship Program" or "ESP" means the voluntary state program for entities in Indiana that:
(A) demonstrate environmental stewardship; and
(B) strive for continual environmental improvement.
(12) "Environmental target" means a detailed performance requirement that:
(A) is quantified where practical; and
(B) arises from the environmental objectives.
(13) "Geographic location", for the purposes of this article, means an aggregation of one (1) or more operations that are:
(A) located on:
(i) one (1) piece of property; or
(ii) contiguous or adjacent properties; and
(B) owned, operated, or controlled by the same entity.
(14) "Independent audit" means an audit conducted by a party that:
(A) is not directly employed by the entity being audited; and
(B) has not played a substantive role in implementing the EMS being audited.
~~(15) "National Environmental Performance Track Program" or "NEPT" means the U.S. EPA's National Environmental Performance Track Program.~~
~~(16)~~ **(15)** "Senior management" means the following:
(A) For entities, the individual or individuals with executive responsibility for the entity.
(B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
(C) For a unit of local government or other governmental unit, either a principal executive officer or ranking elected official.
~~(17)~~ **(16)** "U.S. EPA" means the administrator of the United States Environmental Protection Agency or the administrator's designee.

(Solid Waste Management Division; 329 IAC 18-1-2; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 2. 329 IAC 18-1-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 3. **(a)** Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

(1) The standard of environmental compliance as described in section 10 of this rule.

~~(2) Implement and maintain an EMS as described in section 11 of this rule.~~

~~(3)~~ **(2)** Conduct continuous environmental improvement initiatives as described in section 12 of this rule.

(b) In addition to subsection (a), members in ESP shall implement and maintain an EMS as described in section 11 of this rule.

(Solid Waste Management Division; 329 IAC 18-1-3; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 3. 329 IAC 18-1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-4 Membership application

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 4. (a) A member of senior management shall submit an application, preferably electronically, ~~by one (1) of the following methods:~~

~~(1) For applications~~ for either ESP or CLEAN, ~~only,~~ to the department on **one (1) of the following:**

~~(A)~~ **(1)** A form, whether electronically or hard copy, provided by the department. ~~or~~

~~(B)~~ **(2)** An equivalent form.

~~(2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA. An application submitted to U.S. EPA satisfies the requirement for an application to the department for ESP.~~

(b) The application shall be signed by a member of senior management. The signature shall:

(1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and

(2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) A membership for an entity shall be limited to cover one (1) geographic location, except that an entity may apply for membership as a group of locations if the following criteria are met:

(1) Each location must meet the eligibility criteria individually and as a group, including the requirement to identify environmental improvement initiatives.

(2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:

(A) play an active role in each initiative; and

(B) demonstrate continuous environmental improvement.

(3) The EMS **for an ESP applicant** must address staff and activities at each location.

(4) Senior management must be common to all locations.

(5) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

(1) The EMS **for an ESP applicant** must meet the standards in section 11 of this rule.

(2) A site visit by a representative of the department to provide an understanding of:

(A) the environmental aspects of the entity; and

(B) for an ESP applicant, the EMS.

(3) Identification of environmental improvement initiatives and associated objectives and targets as follows:

(A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and targets for the first year of membership.

(B) For CLEAN applicants, at least ~~five (5)~~ **four (4)** environmental improvement initiatives and associated objectives and targets for the ~~three (3)~~ **four (4)** year term of membership.

~~(4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.~~

~~(5)~~ **(4)** Compliance audits conducted by:

(A) the department;
(B) the U.S. EPA;
(C) other state offices; and
(D) other federal agencies;
as appropriate.
~~(6)~~ **(5)** Other information, including the following:
(A) Compliance information obtained from department staff.
(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Division; 329 IAC 18-1-4; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 4. 329 IAC 18-1-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-5 Term of membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 5. (a) The term of membership is ~~three (3)~~ **four (4)** years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

(b) For ESP members, the department may extend the term for up to one (1) year to
~~(1) coincide with the membership date in NEPT, if applicable; or~~
~~(2)~~ coincide with the annual summary submission by allowing a member whose expiration date occurs ~~prior to~~ **before** April 1 of that year to extend its expiration date to April 1 of that year.

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submission of the ~~third~~ **fourth** annual summary, at which time CLEAN members may seek to renew membership in the program.

(Solid Waste Management Division; 329 IAC 18-1-5; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 5. 329 IAC 18-1-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application, preferably electronically, by April 1 of the ~~third~~ **fourth** year of membership, ~~as follows:~~
~~(1) For renewal applications for ESP only,~~ to the department on **one (1) of the following:**
~~(A)~~ **(1)** A form, either electronically or hard copy, provided by the department. ~~or~~
~~(B)~~ **(2)** An equivalent form.
~~(2) For renewal applications for both ESP and NEPT, electronically to U.S. EPA on the form provided by U.S. EPA.~~

(b) The application shall be signed by a member of senior management. The signature shall:
(1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
(2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations. ~~except a general site visit by a representative of the department shall not be required.~~

(d) The commissioner shall make a determination on the ESP renewal application based on the following:
(1) The EMS must continue to meet the standards in section 11 of this rule.
(2) Review of the annual summaries submitted during the previous membership term.
(3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year of membership.
~~(4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.~~
~~(5)~~ **(4)** Compliance audits conducted by:
(A) the department;
(B) the U.S. EPA;
(C) other state offices; and
(D) other federal agencies;
as appropriate.
~~(6)~~ **(5)** Other information, including the following:
(A) Compliance information obtained from department staff.
(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Division; 329 IAC 18-1-6; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 6. 329 IAC 18-1-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the ~~third~~ **fourth** annual summary of the previous membership term:
(1) to the department within sixty (60) days after the ~~third~~ **fourth** annual anniversary of the date the previous membership term began;
(2) to clearly indicate the intention to renew membership; and
(3) including ~~five (5)~~ **four (4)** objectives, targets, and action plans for the next ~~three (3)~~ **four (4)** year term.

(b) The application shall be signed by a member of senior management. The signature shall:
(1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
(2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and ~~five (5)~~ **four (4)** objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks. ~~and EMS evaluations, except a general site visit by a representative of the department shall not be required.~~

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:
~~(1) The EMS must continue to meet the standards in section 11 of this rule.~~
~~(2)~~ **(1)** Review of the annual summaries submitted during the previous membership term.
~~(3)~~ **(2)** Successful coordination with a member of senior management to identify at least ~~five (5)~~ **four (4)** environmental improvement initiatives and associated goals for the next ~~three (3)~~ **four (4)** year term of membership.
~~(4)~~ **(3)** Compliance audits conducted by:
(A) the department;
(B) the U.S. EPA;
(C) other state offices; and
(D) other federal agencies;
as appropriate.
~~(5)~~ **(4)** Other information, including the following:
(A) Compliance information obtained from department staff.

(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the ~~third~~ **fourth** annual summary, then membership in CLEAN expires upon receipt by the department of the ~~third~~ **fourth** annual summary.

(Solid Waste Management Division; 329 IAC 18-1-7; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 7. 329 IAC 18-1-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-8 Revocation

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:
(1) The standards of environmental compliance described in section 10 of this rule.
(2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application and submittal of the annual summaries.
(3) The requirement to maintain an approved EMS as required for membership **in ESP.**
(4) The prohibition against knowingly submitting false information:
(A) on the application;
(B) in the annual summary;
(C) during a site visit or evaluation by the department; or
(D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:
(1) The ESP or CLEAN program requirements in this article, as applicable.
(2) Federal, state, or local environmental laws, rules, and regulations.

(c) A determination by the commissioner to revoke a membership under subsection (b) may be based upon the following:
(1) Compliance information obtained from department staff.
(2) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(d) If the commissioner determines that a situation shall or may warrant revocation of membership based on subsection (a) or (b), the following applies:
(1) The commissioner shall notify the entity in writing:
(A) of any potential deficiencies found; and
(B) that the commissioner is considering removing the entity from the program.
(2) The notice shall:
(A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;
(B) identify the potential deficiencies; and
(C) provide the entity with thirty (30) days to respond.
(3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(e) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation.

(f) Revocation of memberships shall be posted on the department Web site for the duration of the current application period.

(g) Immediately upon revocation, all member incentives and regulatory benefits afforded to the member of ESP or CLEAN shall be revoked, and the entity is subject to current and applicable regulatory requirements.

(Solid Waste Management Division; 329 IAC 18-1-8; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 8. 329 IAC 18-1-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-9 Transfers

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 9. Membership in ESP ~~or CLEAN~~ may be transferred to another entity at the same geographic location provided:
(1) the department is notified within ninety (90) days of the:
(A) change in ownership or management; and
(B) intent to maintain membership; and
(2) senior management commits to:
(A) fulfilling the previous member's commitments; and
(B) the requirements of the program for the remainder of the membership term by signing an updated membership application.

(Solid Waste Management Division; 329 IAC 18-1-9; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 9. 329 IAC 18-1-10 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-10 Standards of environmental compliance

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that, based on information and belief after reasonable inquiry, the entity is currently in compliance with all applicable local, state, and federal environmental laws, rules, and regulations.

(b) The department shall:
(1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance;
(2) consider all applicable environmental compliance and enforcement criteria, including the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance; and
(3) post the organizational name and location for all new and renewal applications on the department Web site within ~~fourteen (14)~~ **twenty-one (21)** days of the ~~close~~ **receipt** of each application. ~~submission round.~~

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:
(1) Corporate criminal conviction or guilty plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.
(2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:
(1) Ongoing criminal investigation or prosecution of the entity, or an officer or employee of the entity, for a violation of environmental law.
(2) Three (3) or more significant violations at the entity in the past three (3) years.
(3) Unresolved or unaddressed significant noncompliance or significant violations.
(4) Planned, but not yet filed, judicial or administrative action, by U.S. EPA or the department, against the

entity.
(5) Ongoing U.S. EPA or department-initiated litigation against the entity.
(6) A situation where an entity is not in compliance with the schedule and terms of an order or decree issued by:
(A) U.S. EPA; or
(B) the department.
(7) A history of significant environmental problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(Solid Waste Management Division; 329 IAC 18-1-10; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 10. 329 IAC 18-1-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 11. (a) An approved EMS must be implemented by the entity before acceptance of an entity into ESP. ~~or CLEAN.~~

(b) An EMS that meets the criteria for ESP ~~and CLEAN~~ must, at a minimum, include the following:
(1) Evidence of senior management support, commitment, and approval provided through management review of records, employee interviews, or signatory reference to the applicant's environmental policy.
(2) A written environmental policy directed toward the following:
(A) Compliance.
(B) Pollution prevention.
(C) Continuous improvement.
~~(3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.~~
~~(4)~~ **(3)** Identification of the environmental aspects at the entity.
~~(5)~~ **(4)** Prioritization of the environmental aspects and a determination of those aspects deemed significant by the entity considering, at the minimum, environmental impacts and applicable laws, rules, and regulations.
~~(6)~~ **(5)** Established priorities and environmental objectives and targets for the following:
(A) Continuous improvement in environmental performance.
(B) Ensuring compliance with applicable environmental laws, rules, regulations, and permit conditions.
~~(7)~~ **(6)** An established community outreach mechanism that includes the following:
(A) Identifying and responding to community concerns.
(B) Informing the community of important matters that affect the community.
(C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.
(D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.
~~(8)~~ **(7)** Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.
~~(9)~~ **(8)** Evidence of clear responsibility by the entity for the following:
(A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.
(B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
~~(10)~~ **(9)** Documentation of the implementation procedures and the results of implementation.
~~(11)~~ **(10)** Appropriately written EMS procedures to include documented plans, records, and procedures as needed for successful implementation of an EMS as defined in ~~329 IAC 18-1-2(8).~~ **section 2(8) of this rule.**
~~(12)~~ **(11)** An annual evaluation of the EMS with written results provided to senior management and affected employees.

~~(c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or ordinance.~~

~~(d)~~ **(c)** The department shall determine if the EMS meets the criteria in subsection (b).

~~(e)~~ **(d)** A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:
(1) audited by an independent party; or
(2) registered pursuant to a recognized certification standard.

(Solid Waste Management Division; 329 IAC 18-1-11; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 11. 329 IAC 18-1-12 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:
(1) For ESP, a member of senior management shall identify ~~three (3)~~ **four (4)** continuous environmental improvement initiatives for each membership term. One (1) initiative shall be identified at the time of the initial or renewal application and the remaining initiatives shall be identified each year at the time the annual summary is submitted to the department.
(2) For CLEAN, a member of senior management shall identify ~~five (5)~~ **four (4)** continuous environmental improvement initiatives for the ~~three (3)~~ **four (4)** year membership term.

(b) Entities accepted into ESP or CLEAN shall:
(1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and
(2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:
(1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.
(2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:
(A) include objectives and targets beyond current legal requirements; and
(B) as applicable, specify the:
(i) environmental media;
(ii) types of pollution to be prevented or reduced;
(iii) implementation activities; and
(iv) projected time frames.
(3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department.

(Solid Waste Management Division; 329 IAC 18-1-12; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 12. 329 IAC 18-1-13 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

(1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.
(2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
(3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:
(1) Verification of continued progress toward the objectives and targets.
(2) A description of the reason the objectives and targets have not been attained.

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:
(1) cover the twelve (12) month calendar year;
(2) be submitted to the department for each year by April 1 of the following year; and
(3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.

~~(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall satisfy the requirement for an annual summary for ESP members.~~

(Solid Waste Management Division; 329 IAC 18-1-13; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 13. 329 IAC 18-1-14 IS AMENDED TO READ AS FOLLOWS:

329 IAC 18-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:
(1) Progress toward the objectives and targets identified for the ~~five (5)~~ **four (4)** environmental improvement initiatives.
(2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
~~(3) An annual review of the EMS by the entity.~~

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the ~~third~~ **fourth** annual summary is submitted, a member of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began.

(Solid Waste Management Division; 329 IAC 18-1-14; filed May 16, 2007, 3:14 p.m.: 20070613-IR-329050234FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 14. 329 IAC 18-2 IS ADDED TO READ AS FOLLOWS:

Rule 2. Regulatory Flexibility for the Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

329 IAC 18-2-1 Inspection advance notification

Authority: IC 13-14-8; IC 13-19-3-1; IC 13-27-8-3
Affected: IC 13-15; IC 13-19

Sec. 1. A member of ESP or CLEAN in good standing may request to be given twenty-four (24) hours advance notification of representatives of the commissioner arriving at the member's facility to conduct a routine inspection for a program under the commissioner's responsibility. No notice will be given for emergency or complaint-based inspections.

(Solid Waste Management Division; 329 IAC 18-2-1)

Notice of Public Hearing

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