

FIRST NOTICE OF COMMENT PERIOD

LSA Document #15-231

EXCESS LIABILITY TRUST FUND**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [328 IAC 1](#) concerning the excess liability trust 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 1](#).

AUTHORITY: [IC 4-22-2](#); [IC 13-14-8](#); [IC 13-23](#).

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

IDEM is proposing amendments to the rules in Title 328 of the Indiana Administrative Code (IAC) concerning the excess liability trust fund (ELTF). The ELTF program provides a mechanism for the reimbursements of emergency measures, investigation, and corrective action costs, and third-party liability claims deriving from the cleanup of petroleum releases from underground storage tanks (USTs). Owners and operators of operational tanks or property owners with previously closed tanks may apply to the program to receive reimbursements from the fund. The department distributes payments if the applicant meets the eligibility and payment criteria in [IC 13-23-8](#), [IC 13-23-9](#), and the requirements in [328 IAC 1](#).

This rulemaking proposes substantial revisions to [328 IAC 1](#) with the goals of creating a more efficient, current, and equitable process for the administration of the ELTF, and addressing long-standing issues with the rule language and requirements. The proposed changes may include the following:

- Delete, amend, and add definitions.
- Revise criteria to receive cost reimbursements from the ELTF.
- Clarify requirements, rates, and time frames for emergency measures.
- Revise the three-bid process for reimbursement of costs of corrective action.
- Amend and clarify the claim submittal process, including the time frames for cost submittal after approval of technical milestones.
- Update and clarify the requirements for reimbursement of site characterization, corrective action, and closure costs.
- Delete, amend, and add rates for site characterization, corrective action, and closure costs.
- Consider removing the listing of costs from the rule at [328 IAC 1-3-5\(e\)](#), and reference a separate, nonrule document that contains the listing of costs.
- Update the requirements for financial assurance.
- Establish the criteria for administrative denials.
- Amend the personnel classification activity descriptions.
- Update rule language to incorporate statutory changes.
- Update technical references throughout the rules.
- Amend and clarify the rule to reflect the administration of the ELTF program.
- Reorganize and clarify the rules as needed.

This rulemaking will affect persons and entities that are the owners or operators of underground storage tanks or otherwise assigned the right of reimbursement for the tank, and subsequent owners of the property upon which the tanks were located, if the tanks were closed by a previous property owner, tank owner, or operator who is eligible. In addition, any person that may receive cost reimbursements or third party liability claims will be affected by this rulemaking.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 328 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. Amend the rule to include the proposed changes listed in Basic Purpose and Background section of this notice.

- 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. It is a "state-only" requirement.
- 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. Improve the administration of the ELTF program without amendments to the rules at [328 IAC 1](#).

- 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. It is a "state-only" requirement.
- 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

The Solid Waste Disposal Act, Subtitle I, as amended by the Hazardous and Solid Waste Amendments of 1984, gives the United States Environmental Protection Agency (U.S. EPA) the authority to develop regulations for the management of underground storage tanks. The law also gives U.S. EPA the authority to approve state programs that will administer an underground storage tank program in lieu of U.S. EPA. IDEM operates an approved state program for underground storage tanks.

U.S. EPA regulations pertaining to underground storage tanks and the approval of state programs are in 40 CFR 280 and 40 CFR 281, respectively. These regulations expand upon the authority given in the United States Code to establish specific requirements for the management of underground storage tanks and the approval of state programs.

Specifically, 40 CFR 280.101 allows UST owners and operators to satisfy their financial responsibility requirements in 40 CFR 280.93 when using a state fund as long as U.S. EPA determines that the state fund is capable of fulfilling the owners' and operators' financial responsibility requirements. On February 9, 1995, U.S. EPA determined that UST owners and operators may use the ELTF to satisfy their federal financial responsibility requirements as long as the UST owners and operators obtain qualified coverage for their deductible listed in 40 CFR 280.95 through 40 CFR 280.103, or 40 CFR 280.104 through 40 CFR 280.107 for local government.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The potential fiscal impact of this alternative is difficult to estimate at this stage of the rulemaking because IDEM has not yet determined the exact changes to be made for this rule and how they will impact the costs and revenues of affected entities. IDEM anticipates substantial changes to parts of the rule concerning the eligibility for cost reimbursements, financial assurance, administrative processes, and other cost determinations, so the cost or savings of the rule changes could be significant for regulated entities. As the rulemaking advances, IDEM will make a diligent effort to determine the fiscal impact of this rulemaking.

Potential Fiscal Impact of Alternative 2. This alternative will not have a fiscal impact because no changes will be made that affect the costs or reimbursements to regulated entities.

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
IGCN 1225
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 4-4-35-8](#) is:

Erik Scheub
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), 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
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

An external work group will be established to discuss issues involved in this rulemaking. The work group will be made up of IDEM staff and a cross-section of stakeholders. The exact details for the meetings and participants are in development. After the publication of this notice and the review of comments received during the comment period, IDEM will contact interested and affected stakeholders to finalize the details for the work group meetings.

If you wish to provide comments to the work group on the rulemaking, attend meetings, or have suggestions related to the work group process, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 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 work group who represent their particular interests in the rulemaking.

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 #15-231 Excess Liability Trust Fund
Dan Watts
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 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 August 28, 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 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

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