
TITLE 329 SOLID WASTE MANAGEMENT DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #18-281****UNDERGROUND STORAGE TANKS COMPLIANCE DATES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to the underground storage tank (UST) requirements at [329 IAC 9](#). IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [329 IAC 9-1-1](#); [329 IAC 9-8-1](#); [329 IAC 9-8-2](#).

AUTHORITY: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-23-1](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the draft rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#); and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

This rulemaking proposes changes to compliance dates for federal underground storage tank (UST) requirements that are incorporated by reference in [329 IAC 9](#). LSA Document #16-204 amended the UST requirements in [329 IAC 9](#), which included the incorporation by reference of federal UST requirements at 40 CFR 280 to substitute for analogous state UST requirements. The changes to the federal UST requirements, included in a United States Environmental Protection Agency (U.S. EPA) final rule that was published in the Federal Register on July 15, 2015, included multiple future compliance dates for certain requirements. In LSA Document #16-204 at [329 IAC 9-1-1\(d\)\(7\)](#), IDEM modified the October 13, 2018, compliance date in 40 CFR 280 to be the effective date of the amended requirements in [329 IAC 9](#), which was June 28, 2018, and falls earlier than October 13, 2018. However, IDEM intended for the federal compliance dates to be extended to allow adequate time for regulated entities in Indiana to comply with the amended UST requirements. This intent is not clearly specified in the currently effective version of [329 IAC 9](#), as amended by LSA Document #16-204.

In this rulemaking, IDEM is correcting these errors by extending the compliance dates for the federal UST requirements that are incorporated by reference. IDEM will amend [329 IAC 9](#) to clarify and specify these

extended compliance timelines. This rulemaking will modify the compliance dates in 40 CFR 280 as follows:

- The October 13, 2015, compliance date will be modified to the effective date of LSA Document #16-204.
- The October 13, 2018, compliance date will be extended for three years from the effective date of LSA Document #16-204.
- All other compliance dates at 40 CFR 280 included in the July 15, 2015, U.S. EPA final rule will be modified in accordance with the effective date of LSA Document #16-204.

In addition, the rulemaking proposes to delete the compliance dates for financial assurance in [329 IAC 9-8-2](#), as the compliance dates in this section have passed and were deleted in the federal UST requirements. Proposed amendments at [329 IAC 9-8-1](#) and [329 IAC 9-8-2](#) also will clarify the compliance dates and requirements for financial assurance of previously deferred USTs, which were added in the recent amendments to the federal UST requirements.

[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. IDEM is correcting an error regarding state-specific compliance dates for federal requirements that were incorporated by reference in a previous rulemaking. The amendments do not impose any new restrictions or requirements on regulated entities, but rather extend the compliance timelines for existing federal requirements that were previously incorporated by reference.

Potential Fiscal Impact

Any potential fiscal impact from this rulemaking will manifest in short-term cost savings for regulated entities by extending the compliance dates for federal requirements that are incorporated by reference, but will not result in an overall change in the fiscal impact of the affected requirements. This rulemaking is a technical correction that only extends compliance dates in federal requirements that are incorporated by reference and does not propose any substantive amendments to existing requirements or add new requirements that will have a compliance cost for regulated entities. Regulated entities already are required to comply with the requirements that are affected by these compliance dates, with the dates being extended to a later time. By extending the compliance dates, regulated entities will be able to delay any compliance costs associated with the requirements until later dates than those established in the federal requirements. However, the extension of compliance dates simply offsets any incurred costs from compliance with the federal requirements to a later date, rather than resulting in long-term cost savings. Therefore, the rulemaking serves to shift the fiscal impact of the federal requirements to a later date, rather than create cost savings or additional compliance costs, and will not result in an overall change in the potential fiscal impact of the requirements.

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, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

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 CTAP 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:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), 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:

Erin Moorhous

IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8921 or (800) 451-6027

emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on underground storage tanks. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is a technical amendment with no substantive effect on an existing Indiana rule. The amendments correct an error regarding state-specific compliance dates for federal requirements that were previously incorporated by reference.
- (2) This rule is an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule. IDEM is clarifying state-specific compliance dates for federal requirements that were previously incorporated by reference.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because the adoption will ensure clear and specific compliance dates for the federal underground storage tank requirements that were previously incorporated by reference. The federal requirements are designed to reduce the likelihood of releases from underground storage tanks and the associated adverse effects to human health and the environment of these releases.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the draft rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (5) The draft rule is hereby incorporated into these findings.

Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management

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 #18-281 Underground Storage Tanks Compliance Dates
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 your 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, 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 17, 2018. 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).

DRAFT RULE

SECTION 1. [329 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-1](#) Applicability and incorporation by reference

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 4-22-9-5](#); [IC 13-11-2](#); [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 1. (a) This article applies to all owners and operators of a UST as described in 40 CFR 280.10*.

(b) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the July 1, 2016, edition, as incorporated by reference in this article.

(c) Owners and operators of a UST as described in 40 CFR 280.10* shall comply with the technical standards and corrective action requirements for USTs at 40 CFR 280*, with the following exceptions:

- (1) Definitions of "owner" and "operator" in 40 CFR 280.12.
- (2) 40 CFR 280.22.
- (3) 40 CFR 280.53.
- (4) 40 CFR 280.60.
- (5) 40 CFR 280.61.
- (6) 40 CFR 280.63 through 40 CFR 280.67.
- (7) 40 CFR 280, Subpart G.
- (8) 40 CFR 280, Subpart H.
- (9) 40 CFR 280, Subpart I.

(d) When used in 40 CFR 280 as incorporated by this rule, substitute the following:

- (1) A reference to "state" means Indiana.
- (2) A reference to "implementing agency" means the Indiana department of environmental management.
- (3) A reference to 40 CFR 280.22 means [329 IAC 9-2-2](#).
- (4) A reference to 40 CFR 280.53 means [329 IAC 9-4-4](#).
- (5) A reference to 40 CFR 280, Subpart F means [329 IAC 9-5](#).
- (6) A reference to 40 CFR 280, Subpart G means [329 IAC 9-6](#).
- (7) A reference to 40 CFR 280, Subpart H means [329 IAC 9-8](#).**
- (8) A reference to an October 13, 2015, compliance date means June 28, 2018.**
- (9) A reference to an April 11, 2016, compliance date means December 26, 2018.**
- ~~(7) (10)~~ **(10) A reference to an October 13, 2018, compliance date means the effective date of [329 IAC 9](#). June 28, 2021.**
- (11) A reference to an October 13, 2021, compliance date means June 28, 2024.**
- (12) A reference to an October 13, 2022, compliance date means June 28, 2025.**

(e) In addition to the definitions in this section, the definitions in [IC 13-11-2](#) and 40 CFR 280.12* apply throughout this rule.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 9-1-1](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 145; filed Aug 3, 2009, 1:48 p.m.: [20090902-IR-329080055FRA](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))

SECTION 2. [329 IAC 9-8-1](#) IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-8-1 Applicability

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#)

Affected: [IC 13-23-4-1](#); [IC 13-23-4-2](#)

Sec. 1. (a) This rule applies to owners and operators of all petroleum UST systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems ~~are subject to~~ **shall comply with the requirements of** this rule. ~~if they are in operation on or after the date for compliance established in section 2 of this rule.~~

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this rule.

(d) The requirements of this rule do not apply to an owner and operator of any UST system described in 40 CFR 280.10(b), (c)(1), (c)(3), or (c)(4).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one (1) person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. ~~Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in section 2 of this rule.~~

(f) Owners and operators of previously deferred UST systems shall comply with the requirements of this rule according to the schedule in 40 CFR 280.251(a)*.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-8-1](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: [20180620-IR-329180246ACA](#))

SECTION 3. [329 IAC 9-8-2](#) IS REPEALED.

Notice of Public Hearing

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