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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #20-25

**UNDERGROUND STORAGE TANK REVISIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 9](#) concerning underground storage tanks. 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 9](#).

**AUTHORITY:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-14-8-7](#); [IC 13-23-1-2](#); [IC 13-23-1-3](#); [IC 13-23-1-4](#).

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

IDEM administers a federally-approved underground storage tank (UST) program. An UST is a tank or combination of tanks used to contain an accumulation of regulated substances. The volume of an UST, including the volume of any underground pipes connected to the tank or combination of tanks, is at least 10% beneath the surface of the ground. The federal government regulates UST owners and operators through Subtitle I of the Solid Waste Disposal Act, but allows states to maintain their own regulatory programs. State UST programs must comply with 42 U.S.C. Subchapter 9 and corresponding federal regulations, including 40 CFR 280, which set standards for UST installation, ownership, operation, release prevention, release detection and reporting, and UST closure.

Indiana UST rules are found at [329 IAC 9](#), and require UST owners and operators to install and maintain equipment to prevent corrosion, detect leaks, prevent overfill and spills, and meet other performance and upgrade standards. These rules also include reporting processes for stakeholders to follow and corrective actions that must be taken in the event there is a release. [329 IAC 9](#) also requires owners and operators to maintain financial responsibility for corrective action and liability to third parties and also addresses IDEM's ability to prohibit delivery, deposit, or acceptance of a regulated substance into an UST, as authorized by [IC 13-23](#).

On January 10, 2018, the Environmental Rules Board (board) approved changes to [329 IAC 9](#) in response to new requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) in a final rule published on July 15, 2015 (80 FR 41565). These changes were largely incorporated into the Indiana Administrative Code by reference to the Code of Federal Regulations to ensure proper alignment with federal rules. In general, this rule incorporated U.S. EPA's new operation and maintenance requirements and addressed UST systems that were deferred in prior UST regulations.

In this rulemaking, IDEM proposes to amend additional portions of [329 IAC 9](#). These changes will primarily impact [329 IAC 9-5](#) and [329 IAC 9-6](#), which provide requirements for the initial response to a release from an UST, site investigation, corrective action, and UST closure. Similar to previous rulemaking, these changes will also largely incorporate federal regulations by reference in order to ensure that stakeholders are not faced with more burdensome or duplicative processes than those required by federal regulations. Specifically, existing rules for initial site characterization under [329 IAC 9-5-5.1](#), corrective action plans under [329 IAC 9-5-7](#), site assessment for permanent closure or change-in-service under [329 IAC 9-6-2.5](#), and site assessment sampling requirements under [329 IAC 9-6-2.6](#) are more stringent and have more requirements for UST owners and operators than those imposed by federal regulations. Federal UST regulations are less costly and less burdensome than the UST regulations currently found in [329 IAC 9](#).

This rulemaking may also make additional changes to [329 IAC 9](#) in order to make corrections, delete obsolete cross-references, or address typographical errors, inconsistencies, and simplification and clarification of existing rule language.

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. Amend [329 IAC 9](#) by incorporating the federal UST requirements.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes. This alternative would incorporate the requirements of 40 CFR 280 in place of existing state requirements. The language contained within 40 CFR 280 includes requirements for state UST programs.
- If it is a federal requirement, is it different from federal law? No.

- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend existing rules.

- 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? Yes.
- If it is different, describe the differences. While the state's UST program currently meets federal standards, it also places more requirements on UST owners and operators than federal regulations require.

#### **Applicable Federal Law**

42 U.S.C. 6912, Authorities of Administrator

42 U.S.C. Subchapter 9, Regulation of Underground Storage Tanks

40 CFR 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative will have a positive fiscal impact on UST owners and operators, as they will be subject to less burdensome regulations than those currently found in state rules. This alternative will also have a positive impact for IDEM, as it will reduce paperwork and other administrative functions, saving both time and money.

Potential Fiscal Impact of Alternative 2. This alternative will have no fiscal impact. Without this rulemaking, UST operators would still be subject to more stringent requirements than required by federal regulations.

#### **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](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:

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](mailto: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](mailto: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

[emoorhou@idem.in.gov](mailto:emoorhou@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 Seth Engdahl, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 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 #20-25 UST Revisions  
Seth Engdahl  
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) 234-9535.

(3) By electronic mail to [sengdahl@idem.in.gov](mailto:sengdahl@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 March 20, 2020. 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 Seth Engdahl, Rules Development Branch, Office of Legal Counsel, (317) 234-9535 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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