

FIRST NOTICE OF COMMENT PERIOD

LSA Document #21-128

SECONDARY CONTAINMENT

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [327 IAC 2-10](#) concerning secondary containment for aboveground storage tanks storing hazardous materials. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: [327 IAC 2-10](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-18-5](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In accordance with [IC 13-18-5](#), Indiana established the secondary containment rule in [327 IAC 2-10](#) in 1999. A secondary containment structure is defined in [IC 13-11-2-197](#) as "a structure or a part of a structure that prevents or impedes a hazardous material that is released accidentally from entering surface water or groundwater." The rule requires secondary containment and a spill response plan for liquid hazardous materials in the storage and transfer areas for aboveground storage tanks (AST). Unless specifically excluded, the rule applies to AST systems constructed after June 27, 1999, and to an AST system, storage area, or transfer area constructed prior to this date when it is moved or replaced. The spill response plan requirements apply to all subject AST systems regardless of when they were constructed. Secondary containment must be constructed in a manner to prevent or impede a spill from entering waters of the state. It may be in the form of a dike, berm, retaining wall, trench, tank with an outer shell, or a diversionary system that direct the discharges to treatment or temporary holding areas.

In November 2015, IDEM released its "Report of Aboveground Storage Tank Rules and Regulations Pursuant to Senate Enrolled Act 312." This reevaluation of the secondary containment requirements was in part a response to the January 2014 spill from an AST in West Virginia that caused the shutdown of a public water system and left 300,000 residents without public drinking water. The IDEM report identified several state and federal regulations that apply to ASTs, some of which have overlapping reporting requirements. It also indicated that the Secondary Containment Rule "might be insufficient relative to release protection" since AST systems constructed prior to June 27, 1999, are not required to have secondary containment unless they are moved or replaced, yet these older tanks are the most susceptible to leaks and spills.

In this rulemaking, IDEM proposes to make revisions to update and make improvements to the secondary containment rule at [327 IAC 2-10](#). In addition, this rulemaking will clarify provisions, remove obsolete language, make corrections, and update language to conform to current rule writing standards. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 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. Update and make improvements to the secondary containment rule at [327 IAC 2-10](#).

- 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? There are a number of federal requirements for secondary containment and spill response plans, which are listed below. However, these rules are authorized under state statutes, [IC 13-14-8-7](#) and [IC 13-18-5](#).
- 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. Make no changes to the secondary containment rule at [327 IAC 2-10](#).

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

Applicable Federal Law

Clean Air Act (CAA), 40 CFR 60 subpart K, 40 CFR 60 subpart Ka, and 40 CFR 60 subpart XX; risk management plans, 40 CFR 68.150 et seq.; Emergency Planning and Community Right-to-Know Act (EPCRA), 42 USC 11001 to 11050, and 40 CFR 300 to 372; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq. and 40 CFR 302 et seq.; oil spill prevention: Clean Water Act

(CWA), 33 USC 1251 et seq. (1972) and Oil Pollution Act of 1990 (OPA), 33 USC 2701 to 2762; Spill Prevention, Control, and Countermeasure (SPCC) Plans: 40 CFR 112; Resource Conservation and Recovery Act (RCRA), 42 USC 6901 to 6992k; hazardous waste tanks: 40 CFR 260.10 and 40 CFR 264.190 to 264.200; used oil requirements: 40 CFR 279.54; flammable liquids: 29 CFR 1910.106, 29 CFR 1910.110, and 29 CFR 1926.152; liquefied natural gas storage: 49 CFR 193; transportation of hazardous liquids by pipeline: 49 CFR 195; and hazardous materials and special provisions: 49 CFR 172.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. While the fiscal impact of potential amendments cannot be determined until the suggested amendments are drafted, secondary containment updates may carry a fiscal impact if the rule requires either more robust secondary containment structures or includes requirements for previously excluded tanks. However, these containment structures may also reduce response and cleanup costs for affected parties if the structures prevent the release of substances to surrounding land or waters.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact if the rule is not changed.

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:

Joseph Fagan
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 586-3807
jfagan@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

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 Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 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:

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Keelyn Walsh
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 electronic mail to kwalsh@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.**

Contact Karla Kindrick at kkindric@idem.in.gov or (317) 232-8922 if another method of submitting comments within the comment period is desired. 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 or time stamped not later than May 7, 2021.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

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

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