

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

NOTE: Under P.L.133-2012, SECTION 72, the statutory authority to adopt these rules has been transferred to the Environmental Rules Board to be administered and implemented by the Solid Waste Management Division of the Department of Environmental Management, effective January 1, 2013.

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Provisions Applicable Throughout Title 329

329 IAC 1-1-1 Applicability of rule

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-19-3

Sec. 1. This rule (329 IAC 1-1) is applicable to all of Title 329 IAC. *(Solid Waste Management Division; 329 IAC 1-1-1; filed May 31, 1988, 2:42 p.m.: 11 IR 3199; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233; readopted filed May 27, 2020, 9:00 a.m.: 20200624-IR-329200188BFA)*

329 IAC 1-1-2 Severability

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-19-3

Sec. 2. If any provision of these rules (329 IAC) or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect any other provision or application of these rules (329 IAC) which can be given effect without the invalid provision or application. *(Solid Waste Management Division; 329 IAC 1-1-2; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233; readopted filed May 27, 2020, 9:00 a.m.: 20200624-IR-329200188BFA)*

329 IAC 1-1-3 Savings clause

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-19-3

Sec. 3. The repeal and reenactment in this Title (329 IAC) of any rule previously the responsibility of the Solid Waste Management Board, the Environmental Management Board, or the Stream Pollution Control Board shall not have the effect to release or extinguish any penalty or forfeiture incurred under the same, and such previous rule shall be treated as still remaining on in force for the purpose of sustaining any proper action, or prosecution for the enforcement of such penalty, forfeiture or liability. *(Solid Waste Management Division; 329 IAC 1-1-3; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233; readopted filed May 27, 2020, 9:00 a.m.: 20200624-IR-329200188BFA)*

329 IAC 1-1-4 Reference to federal acts

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-19-3

Sec. 4. (a) Unless otherwise indicated, references in this title to the Resource Conservation and Recovery Act (RCRA) mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. §6901, et seq.

(b) Unless otherwise indicated, references in this title to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. §9601, et seq.

(c) Unless otherwise indicated, references in this title to the Toxic Substances Control Act (TSCA) mean the Toxic Substances Control Act as amended by the Asbestos Hazard Emergency Response Act of 1986 and the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as amended, 15 U.S.C. §2601 et seq.

(d) Unless otherwise indicated, references in this title to the Code of Federal Regulations (CFR) mean the July 1, 2017, version. *(Solid Waste Management Division; 329 IAC 1-1-4; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35*

p.m.: 25 IR 233; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA; filed Apr 24, 2020, 4:48 p.m.: 20200506-IR-329190411FRA, eff Apr 24, 2020, see Executive Order 20-15, posted at 20200422-IR-GOV200234EOA; readopted filed May 27, 2020, 9:00 a.m.: 20200624-IR-329200188BFA)

Rule 2. Restrictive Covenants

329 IAC 1-2-1 Applicability

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-11-2-193.5; IC 13-14-2-9; IC 13-23; IC 13-24; IC 13-25-4; IC 13-25-5

Sec. 1. This rule applies to the owner of a property:

(1) that is subject to a restrictive covenant, as defined in IC 13-11-2-193.5, created in connection with a remediation project conducted under:

- (A) IC 13-23;
- (B) IC 13-24;
- (C) IC 13-25-4; or
- (D) IC 13-25-5; and

(2) for which the owner seeks approval from the department to:

- (A) modify a restriction or obligation; or
- (B) terminate a restrictive covenant.

(Solid Waste Management Division; 329 IAC 1-2-1; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA)

329 IAC 1-2-2 Definitions

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-11-2; IC 13-14-2-9

Sec. 2. (a) In addition to the definitions in IC 13-11-2, the definitions in this section apply throughout this rule.

(b) "Applicant" means a person who applies for a modification or termination of a restrictive covenant.

(c) "Modification" means any amendment to a restrictive covenant subject to this rule that results in a remaining restriction or obligation to the owner of the property.

(d) "Owner" means the owner of real property subject to a restrictive covenant.

(e) "Termination" means the expiration of the restrictive covenant and cessation of all terms of the restrictive covenant. *(Solid Waste Management Division; 329 IAC 1-2-2; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA)*

329 IAC 1-2-3 General provisions

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-14-2-9

Sec. 3. An owner may request a modification or termination in accordance with IC 13-14-2-9 if:

(1) there is a change in conditions or advancement in science or technology that would permit a modification; and

(2) the modification of the conditions and restrictions imposed by the restrictive covenant would not increase the potential hazards to human health or the environment.

(Solid Waste Management Division; 329 IAC 1-2-3; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA)

329 IAC 1-2-4 Modification or termination application

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-14-2-9

Sec. 4. (a) An application for modification or termination of a restrictive covenant must be submitted to the commissioner on forms provided by the department. To be considered complete, the following information must be included:

- (1) A copy of the proposed modification or termination.
- (2) An explanation of the change in condition or advancement of science and technology that permits the modification or termination.
- (3) Third party contact information based on:
 - (A) required approvals from the original restrictive covenant; or
 - (B) approval required by a court action.
- (4) A copy of written approval for the requested modification or termination from:
 - (A) the property owner, if different than the applicant; and
 - (B) any third party as required by:
 - (i) the original restrictive covenant; or
 - (ii) a court action.

(b) In accordance with IC 13-14-2-9(c), the commissioner may request additional information to make a determination on the modification or termination request. (*Solid Waste Management Division; 329 IAC 1-2-4; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA*)

329 IAC 1-2-5 Action on an application

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-14-2-9

Sec. 5. (a) The commissioner shall approve a request for modification or termination of a restrictive covenant if the commissioner determines that the modification or termination meets the requirements of:

- (1) IC 13-14-2-9; and
- (2) this rule.

(b) The commissioner may authorize the filing of a supplemental recording to reflect an approved modification or termination of a restrictive covenant pursuant to IC 13-14-2-9(c). A supplemental recording must comply with section 6 of this rule. (*Solid Waste Management Division; 329 IAC 1-2-5; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA*)

329 IAC 1-2-6 Submittal of supplemental recording

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-14-2-9

Sec. 6. (a) All restrictive covenant modifications and terminations must be recorded in the same manner and with the same county recorder as the original restrictive covenant.

(b) The owner shall provide a copy of the supplemental recording to the department within thirty (30) days of the recordation. (*Solid Waste Management Division; 329 IAC 1-2-6; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA*)

329 IAC 1-2-7 Cost recovery

Authority: IC 13-14-2-9; IC 13-25-4-1; IC 13-25-4-2

Affected: IC 13-14-2-6; IC 13-14-2-9

Sec. 7. (a) In accordance with IC 13-14-2-9(d), the applicant shall reimburse the department for the administrative and personnel expenses incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule.

(b) Administrative expenses must include any expense to the department related to the review of the modification or termination request that would not have otherwise been incurred by the department.

(c) The department shall charge personnel expenses at seventy-five (75) dollars per hour of time a department employee expends in evaluating the proposed modification or termination request.

(d) The department shall send an invoice to the owner for personnel and administrative costs to the department.

(e) Failure to reimburse the department for expenses incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule may result in:

SOLID WASTE MANAGEMENT DIVISION

(1) denial of the modification or termination; or

(2) legal action under IC 13-14-2-6.

(Solid Waste Management Division; 329 IAC 1-2-7; filed Apr 28, 2016, 3:41 p.m.: 20160525-IR-329140254FRA)

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