

Document: IC 13-14-9 Notice, **Register Page Number:** 26 IR 1744

Source: February 1, 2003, Indiana Register, Volume 26, Number 5

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TITLE 328 UNDERGROUND STORAGE TANK

FINANCIAL ASSURANCE BOARD

CONTINUATION OF FIRST NOTICE

#02-204(FAB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE UNDERGROUND STORAGE TANK LIABILITY TRUST FUND

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules of the Financial Assurance Board at 328 IAC 1. The First Notice asked for comments to provide consistency with the RISC closure options allowed by the statute at IC 13-12-3-2, the Underground Storage Tank Rules and the allowance for payments under the Excess Liability Trust Fund (ELTF) Rule. In addition to the subject matter in the First Notice, this continuation of First Notice proposes the addition of several definitions to clarify the rule. Other specific matters for which comment is solicited include the penalty provisions; allowing access to the ELTF for successor owners or operators; a provision that the commissioner may request additional information before reimbursement is justified; clarification that approval of the corrective active plan under 329 IAC 9 is not the same as a determination that the costs are eligible for reimbursement under 328 IAC 1; as well as clarification of eligible reimbursement costs; provisions for: submission of a budget, reporting credits, rebates, and refunds, allowing audits of financial records, and adding owner and operator signature to the claim application. Proposals for clarification or amendment of any other provision of the rule are included in the scope of this notice. 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 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

A First Notice of Comment Period was published in the August 1, 2002, Indiana Register announcing the Financial Assurance Board's intention to initiate rulemaking for amendments to 328 IAC 1 concerning the excess liability trust fund (ELTF) rule. This notice serves as a continuation of the First Notice. This notice is an opportunity for interested members of the public to provide comment on the following additional subject matter pertaining to #02-204(FAB).

ADDITIONAL SUBJECT MATTER

In addition to the subject matter listed in the first notice of comment period at 25 IR 3906, comments are requested on the following:

- (1) Additional information to justify an expense may be requested by the commissioner before payment is made.
- (2) Definitions may be added or be revised for "third party", "calendar year" or "fiscal year".
- (3) Revisions to 328 IAC 1-3-3 to specify how the penalties would be calculated and perhaps allow flexibility in adjusting the penalties for specific situations.
- (4) Submission to the commissioner for approval of the budget for the corrective action plan (CAP) prior to the implementation of any clean-up activities at the site for which a claim for reimbursement would be submitted to the department.
- (5) Documentation and reporting of any credits, rebates, refunds, or other similar payments given to the owner or operator regarding the corrective action at a site.
- (6) Clarification that eligible reimbursable costs include only reasonable labor and project costs.
- (7) That the commissioner or representatives of the commissioner may request and audit, under appropriate provisions for confidentiality, the financial records of persons employed by or are under contract to the owner or operator and that pertain to the corrective action of a site prior to payment of a claim.
- (8) In addition to the person applying to the fund for reimbursement, the owner and operator must sign the statement under 328 IAC 1-5-1(b) on the claim application.
- (9) Clarification that the approval of the initial site characterization and the corrective action plan, under 329 IAC 9, does not necessarily mean that costs incurred are reasonable and eligible for payment under 328 IAC 1.
- (10) Revision that would allow access to the ELTF for a successor owner or operator for corrective action costs due to a prior owner or operator's release.
- (11) Other issues that need to be addressed amending the rule in conformance with IC 13-23 or to clarify the rule or to clarify the intent of the rule.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life, or to the reasonable enjoyment of life and property.

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.

Mailed comments should be addressed to:

#02-204(FAB) [ELTF Change Rule]

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Land Quality's Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by March 5, 2003.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce Palin

Deputy Assistant Commissioner

Office of Land Quality