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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD #05-167(SWMB)

AMENDMENTS TO 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES; FINANCIAL RESPONSIBILITY

PURPOSE OF NOTICE

Amends 329 IAC 10-39 on financial assurance mechanisms to clarify that only a trust fund can be funded annually and that the annual payments can only be for the duration of the initial permit or over the remaining life of the facility, whichever is shorter. The trust fund must be fully funded at the time of permit renewal. Amends 329 IAC 10-39-2(c) to change the date the annual financial review is submitted from the anniversary of the permit to a set date of February 15 each year. This is the date the annual flyover results must be submitted.

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 10-39.

AUTHORITY: IC 4-22-2; IC 13-14-8-1; IC 13-14-8-2; IC 13-14-9; IC 13-15-2; IC 13-19-3-1; IC 13-30-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking involves changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the life of the permitted unit, whichever is shorter. In addition, the annual review and the annual flyover results both are to be submitted on the same date, February 15, each year.

The changes regarding the trust fund are being proposed to protect the state of Indiana financially. If a landfill goes bankrupt before the closure and post-closure is fully funded, the State could be left with closure and post-closure costs. The proposed changes to submit an annual financial review are for the convenience of the regulated community. The rule is also unclear and conflicting.

Alternatives to be Considered Within the Rulemaking

Alternative 1. Two changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the life of the permitted unit, whichever is shorter. One change to require the annual review and the annual flyover results both be submitted on the same date, February 15, each year.

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? Yes, partially, the two changes to the trust fund rule language are an incorporation of the federal language for trust fund financial mechanism use.

If it is a federal requirement, is it different from federal law? It is the same as the federal requirements.

If it is different, describe the differences.

Alternative 2. Make no changes.

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, to leave the rule as it currently is could open both the regulated community and IDEM to litigation under the federal rules. The current rule does not provide the degree of financial assurance that the federal rule mandate.

If it is different, describe the differences.

Alternative 3. Apply as a policy.

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, the federal rule doesn't allow for an implementation by policy alone.

If it is a federal requirement, is it different from federal law? Yes, to leave the rule as it currently is could open both the regulated community and IDEM to litigation under the federal rules. The policy would conflict with current state rules.

If it is different, describe the differences.

Applicable Federal Law 40 CFR 258.70-258.74 prescribes the requirements for the financial assurance and financial responsibility required under the federal regulations. This regulation sets the standards for financial assurance for closure, post-closure and corrective action for municipal solid waste landfills. It also provides the allowable mechanisms for financial assurance. The requirement to fully fund a trust fund over the term of the initial permit or over the remaining life of the landfill unit, whichever is shorter, is a federal requirement at 40 CFR 258.74(a)(2). Also, annual payments are only allowed in the federal rules for trust funds under 40 CFR 258.74(a)(3).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. Regarding the changes to the trust fund mechanism, there would be a minimal cost to the regulated community as these changes are already required by federal rules. The regulated community is not required to choose a trust fund as their financial assurance mechanism but have a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.

Potential Fiscal Impact of Alternative 2. Without changes, the State program would not have the degree of financial security mandated under the federal rules. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.

Potential Fiscal Impact of Alternative 3. Regarding the changes to the trust fund mechanism, there would be a minimal cost to the regulated community because as this is already required by federal rules. The regulated community is not required to choose a trust fund as their financial assurance mechanism but have a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program 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 the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.IN.gov

Public Participation and Workgroup Information

A workgroup is planned for this rulemaking. If you are interest in being a member of this workgroup, please contact Lynn West, Rules, Outreach and Planning Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana).

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:

#05-167(SWMB) [FA Change Rule]
Marjorie Samuel
Rules, Outreach, and Planning 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 Marjorie Samuel in the Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 1, 2005.

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 H. Palin
Deputy Assistant Commissioner
Office of Land Quality