

Document: IC 13-14-9 Notice, **Register Page Number:** 28 IR 3062

Source: July 1, 2005, Indiana Register, Volume 28, Number 10

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD #05-168(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING WASTE TIRE MANAGEMENT AT 329 IAC 15

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 15 concerning the following:

- Repeal the definition of “passenger tire equivalent” in 329 IAC 15-2-8 and allow regulated entities to use common industry units of measurement for waste tire reports and calculations.
- Add a requirement in 329 IAC 15-3-3 for waste tire storage sites and in 329 IAC 15-3-6 for waste tire processing operations that the applicant must provide evidence that all required zoning approvals have been obtained before the registration is issued.
- Add a new 329 IAC 15-3-7.5 to clarify that a waste tire processing operation that also meets the definition of a waste tire storage site because it accumulates one thousand (1,000) or more waste tires outdoors (or two thousand (2,000) or more waste tires in a completely enclosed structure) must register as a waste tire storage site and provide financial assurance as required by Indiana law.
- Simplify the Annual Tire Summary form in 329 IAC 15-3-20 to require less information and allow use of common industry units of measurement. Revise the form so it meets State Board of Accounts forms standards and add a certification of accuracy under penalty of perjury.
- Update the Waste Tire Manifest form in 329 IAC 15-4-13 to meet State Board of Accounts forms standards.
- Add a new Annual Tire Report form in 329 IAC 15-4-14 to simplify annual reporting by waste tire transporters.
- Clarify 329 IAC 15-5-1 to clearly set out what activities must be covered by a waste tire storage site’s financial assurance.
- Clarify when the closure cost estimate must be revised by moving that requirement from 329 IAC 15-5-3(b) to a new 329 IAC 15-3-3.5.
- Amend 329 IAC 15 to eliminate confusing or inconsistent language, to clarify terms, or to make the rules consistent with the governing statutes.
- Make other appropriate changes recommended in public comments.
- Readopt 329 IAC 15 in accordance with IC 13-14-9.5.

IDEM seeks comment on the affected citations listed and any other provisions of 329 IAC 15 or other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 15.

AUTHORITY: IC 13-20-13; IC 13-20-14.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The rules for waste tire management at 329 IAC 15 were effective on November 9, 2000. Since their implementation, IDEM has identified several areas where the rules are confusing or incorrect. IDEM has also identified several areas where the rules can be streamlined and made easier and potentially less costly to comply with.

Proposed Changes and Their Potential Fiscal Impact

To improve the waste tire management rules, IDEM is proposing to amend 329 IAC 15 as described below. As required by IC 13-14-9-3(2)(B), added by P.L. 240-2003, SECTION 4, these changes are not imposed under federal law and may potentially have some fiscal impact on regulated entities affected by this rule as follows:

- Repeal 329 IAC 15-2-8 to remove the definition of “passenger tire equivalent.” Regulated entities would use common industry units of measurement in reports and calculations instead of converting amounts to the passenger tire equivalent. *Potential fiscal impact:* This change would not impose any additional costs on regulated entities in Indiana. It would allow regulated entities to use common industry units of measurement in reports and calculations, and eliminate the requirement for regulated entities to convert these units to a common passenger tire equivalent.

- Add a requirement in 329 IAC 15-3-3 for waste tire storage sites and 329 IAC 15-3-6 for waste tire processing operations that the applicant must provide evidence that all required zoning approvals have been obtained before the registration is issued. This requirement would be similar to the current requirement for solid waste landfills at 329 IAC 10-11-2.5(a)(6). This is a document request so that IDEM will not register a waste tire storage site or waste tire processing operation that is not in compliance with local zoning ordinances. *Potential fiscal impact:* This change will not impose any additional costs on regulated entities. If zoning is required, that requirement is imposed by local ordinances and not imposed by this rule. This provision would merely make it clear that IDEM will not register a site that does not comply with local zoning ordinances, where they exist.
- Add a new 329 IAC 15-3-7.5 to clarify that a waste tire processing operation that meets the definition of a waste tire storage site because it accumulates one thousand (1,000) or more waste tires outdoors (or two thousand (2,000) or more waste tires in a completely enclosed structure) must register as a waste tire storage site and provide financial assurance as required by Indiana law. *Potential fiscal impact:* While this change does not add any new requirements, enforcement of those requirements may result in additional costs to entities that are currently accumulating more than one thousand (1,000) waste tires without being registered as waste tire storage sites. These entities may incur additional costs as they come into compliance with IC 13-20-13. Our records indicate that up to fourteen (14) facilities currently registered as waste tire processing operations may accumulate more than one thousand (1,000) waste tires without being registered as waste tire storage sites. This would potentially result in additional registration fees of about four thousand two hundred dollars (\$4,200) if all these facilities registered as required by IC 13-20-13.

In addition, these facilities accumulate up to an estimated one million (1,000,000) waste tires that are not covered by financial assurance, based on inspection reports from 2004. The additional cost of the annual premiums to obtain the required financial assurance could range from forty thousand dollars (\$40,000) to fifty thousand dollars (\$50,000) annually, based on the current cost for performance bonds of two percent (2%) to two and one-half percent (2.5%) per year, and the current cost to remove waste tires of approximately two dollars (\$2.00) per waste tire. These estimates are approximate. While IDEM has extensive experience with waste tire removal, our experience with financial assurance premiums at the three (3) currently registered waste tire storage sites is limited.

It must be emphasized that these costs are not additional costs imposed by this rule, but are the costs imposed by rigorous enforcement of the waste tire storage site registration requirements of IC 13-20-13. The amount of financial assurance that these facilities are avoiding by not registering and obtaining financial assurance as required by law represents the potential exposure of Indiana taxpayers to the unsecured costs of cleaning up these illegal sites.

As a result, these potential costs must be balanced against the estimated two million dollars (\$2,000,000) of potential waste tire cleanup costs that are not covered by financial assurance. These costs will potentially be borne by Indiana taxpayers if these unregistered sites are not brought into compliance with Indiana law.

At this time, there is no way to quantify the actual costs to regulated entities of bringing these sites into compliance. There is no way to determine how many facilities would choose to register as waste tire storage sites and obtain financial assurance for their tires, how many would simply dispose of their tires, and how many would go into enforcement or abandon their sites and transfer the burden to Indiana taxpayers.

In addition, the actual number of unregistered waste tire storage sites and waste tires accumulated at those sites is continually being reduced due to the efforts of the Office of Land Quality and the Office of Compliance and Enforcement to either bring these sites into compliance or close the sites and properly dispose of the waste tires. As a result, the actual number of unregistered storage sites and quantity of illegally accumulated waste tires will be significantly less when this rule becomes effective than it is now.

- Simplify the Annual Tire Summary form in 329 IAC 15-3-20 to require only essential information, allow use of common industry units of measurement, and meet State Board of Accounts forms standards, as well as adding a certificate of accuracy under penalty of perjury. IC 13-20-13-5(1) requires a waste tire storage site or waste tire processing operation registrant to report annually to the department on the number of waste tires received at the site or operation and the number and manner of disposal of the waste tires. IC 13-20-13-10 requires the department to annually report on the status of Indiana's waste tire management program. This change would reconcile these two (2) requirements by requiring registrants to report only the information needed for IDEM's annual report. This change would also remove the requirement to convert common units of measurement to the passenger tire equivalent. *Potential fiscal impact:* This change clarifies an existing requirement. It would not impose any new requirements. While use of the new form would simplify reporting, IDEM estimates that it will not result in any significantly increased cost or savings to regulated entities.
- Update the Waste Tire Manifest form in 329 IAC 15-4-13 to meet State Board of Accounts forms standards. *Potential fiscal impact:* The information required on the form is not changed. This change will not result in any increased cost or savings to regulated entities. This change is intended to make the manifest forms easier to use.
- Add a new annual tire report form in 329 IAC 15-4-14 to simplify annual reporting by waste tire transporters. Waste tire transporters currently use the Annual Tire Summary form in 329 IAC 15-3-20(b), which requires more information than transporters are required to report under the waste tire statute. This new form would require only the information required by 329 IAC 15-4-14. *Potential fiscal impact:* Use of the new form could result in a small savings to the approximately eighty-five transporters currently registered, however, that savings cannot be quantified at this time.

- Clarify 329 IAC 15-5-1 to clearly explain what activities must be covered by a waste tire storage site's financial assurance mechanism. The current rule refers to both removal of waste tires and final closure under 329 IAC 15-3-21. This change would clarify that financial assurance must cover all final closure activities. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.
- Amend 329 IAC 15-5-3 and add a new 329 IAC 15-5-3.5 to clarify when the closure cost estimate must be revised. This requirement is currently included as 329 IAC 15-5-3(b) and is commonly overlooked. Few waste tires storage sites actually update their closure cost estimates regularly, even though the real costs of waste tire removal and site closure regularly increase. Moving this requirement to a separate section will emphasize it. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.
- Amend 329 IAC 15 to eliminate confusing or inconsistent language, to clarify terms, or to make the rules consistent with the governing statutes. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.
- Readopt 329 IAC 15 in accordance with IC 13-14-9.5. IDEM intends to readopt this article in anticipation of its expiration as provided for in IC 13-14-9.5-3. This article will expire on January 1, 2007 and must be readopted before that date to comply with IC 13-20-13 and IC 13-20-14. Beginning the readoption process now will ensure that it is completed by the expiration date. Under IC 13-14-9.5-4, a person may submit a written request, including the basis for that request, that a particular rule be readopted separately from this rulemaking under the provisions of IC 13-14-9, including full public notice and comment. It must be noted that IDEM intends to readopt the entire article under the full notice and comment provisions of IC 13-14-9 and IC 4-22-2. *Potential fiscal impact:* This change would extend the waste tire rules beyond the currently scheduled expiration date, as required by Indiana law. It would impose only those new requirements adopted in this rulemaking and would not be expected to result in any significantly increased cost or savings to regulated entities.

IDEM is specifically asking for comment on the costs and savings that would be experienced if any or all of these changes are adopted.

This notice specifically solicits comment on the proposed changes listed above and any other changes that would accomplish the purpose of this rule. Based on the comments received on this notice, additional changes may be considered.

Alternatives to be Considered in this Rulemaking

The following alternatives are being considered in this rulemaking:

Alternative 1. Adopt any or all of the proposed changes described above, and readopt 329 IAC 15 under IC 13-14-9.5. This alternative would make each of the changes described above that are adopted by the Solid Waste Management Board and would make the amended waste tire rules effective beyond the January 1, 2007, expiration date.

Alternative 2. Do not adopt any of the proposed changes described above, but readopt 329 IAC as it exists today under IC 13-14-9.5. This alternative would not make any of the changes described above, but would make the existing waste tire rules effective until January 1, 2014, or until they are amended in another rulemaking.

Alternative 3. Do not readopt 329 IAC 15 under IC 13-14-9.5, allowing the article to expire on January 1, 2007. This alternative would result in no rules for waste tire management after the expiration date and would conflict with the waste tire statutes that require such rules.

Applicable Federal Law

There is no applicable federal law related to management of waste tires.

Justification Required by IC 4-22-2-24

In accordance with IC 4-22-2-24, as amended by P.L.239-2005, SECTION 1, this rule does not impose any requirements or costs that are not expressly authorized by IC 13-20-13 and IC 13-20-14 or by any other Indiana or federal law.

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

IDEM may establish an external workgroup to discuss issues involved in this rulemaking. The workgroup, if established, would be made up of department staff and a cross-section of stakeholders. If you believe a workgroup would further the purposes of this rule and result in better rulemaking, and you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

Marjorie Samuel (#05-168; Waste Tires)

Indiana Department of Environmental Management

Office of Land Quality

100 N. Senate Ave., Room 1101

Indianapolis, Indiana 46204-2241

If too many applications are received to form a functional workgroup, the department will select a representative group from the applications on file.

The formation of a workgroup, if it occurs, will be announced on IDEM's rulemaking website: <http://www.in.gov/idem/rules/>. If a workgroup is formed and you wish to provide comments to the workgroup on the rulemaking, attend meetings, or submit suggestions related to the workgroup process, please contact Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number and e-mail address, if applicable, where you can be contacted.

The public is also encouraged to submit comments and questions directly to members of the workgroup who represent their particular interests in the rulemaking. If a workgroup is established, a list of workgroup members and the interests they represent will be provided on request.

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.
- (3) The submission of information on the fiscal impact of each change identified in this notice.

Mailed comments should be addressed to:

Marjorie Samuel (#05-168; Waste Tires)

Indiana Department of Environmental Management

Office of Land Quality

100 N. Senate Ave., Room 1101

Indianapolis, Indiana 46204-2241

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality,

100 North Senate Avenue, Eleventh Floor East, 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 Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 31, 2005.

Additional information regarding this action may be obtained from Steve Mojonier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at <http://www.in.gov/idem/rules/>.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality