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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD #05-182(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING INSPECTION AND CLEANING OF PROPERTIES CONTAMINATED BY CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance. This rulemaking is required by Public Law 192-2005 (Senate Enrolled Act 444), SECTION 6. This rule would include the following subject matter:

- Listing of persons qualified to inspect and clean contaminated property.
- Qualification and certification of persons who inspect and clean contaminated property.
- Standards or criteria for inspection and remediation of contaminated property.

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 17.

AUTHORITY: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4; P.L.192-2005.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

P.L.192-2005 was intended to assist law enforcement agencies and property owners with responding to and remediating property contaminated by the illegal manufacture of methamphetamine. SECTION 6 of this public law requires the Indiana Department of Environmental Management (IDEM) to maintain a list of persons certified to inspect and clean property that is contaminated by a contaminant. IDEM may set the qualifications and expertise required for certification. In addition, P.L.192-2005 expanded the definition of “contaminant” in IC 13-11-2-42 to include “chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or an immediate precursor (as defined in IC 35-48-1-17) of a controlled substance.”.

P.L.192-2005, SECTION 6, requires IDEM to adopt rules to implement the above requirements and to regulate inspection and remediation of contaminated property.

Alternatives to be Considered Within the Rulemaking

There are no alternatives to rulemaking to accomplish the purposes of this notice. IDEM is considering the following alternatives in this rulemaking:

Alternative 1. Adopt criteria and procedures for qualification and certification of persons qualified to inspect and clean contaminated property.

- 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 this alternative is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. There is no corresponding federal requirement.

Alternative 2. Establish duties and requirements for persons who are certified by IDEM to inspect and clean contaminated property.

- 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 this alternative is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. There is no corresponding federal requirement.

Alternative 3. Adopt requirements for inspection and cleaning of properties contaminated with chemicals used in the manufacture of a controlled substance or an immediate precursor of the controlled substance.

- 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 this alternative is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. There is no corresponding federal requirement.

Additional Alternatives

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

Applicable Federal Law

While there are no federal laws dealing directly with the remediation of properties contaminated by the illegal manufacture of a controlled substance, federal hazardous waste regulations may apply to the management and disposal of hazardous waste generated by such remediation. To the extent that the rule will regulate hazardous wastes, such requirements will be as stringent as the federal hazardous waste program contained in 40 CFR 260 through 40 CFR 273.

Potential Fiscal Impact

Alternatives 1 through 3 are not required to be adopted under federal law. However, IDEM has not determined the specific requirements that would be proposed for adoption for each alternative. As a result, IDEM cannot estimate the potential fiscal impact of these alternatives at this time. IDEM specifically solicits comment on the potential fiscal impact of any draft language proposed by commentors for this rulemaking.

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 North Senate Avenue
W-041
Indianapolis, Indiana 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 – MC 50-01
100 North Senate Avenue
Indianapolis, Indiana 46204-2251
(317) 234-3386
elevenhagen@idem.IN.gov

Public Participation and Workgroup Information

An external workgroup may be established 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:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

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 Web site: <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 Mojonner, 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 alternative identified in this notice.

Mailed comments should be addressed to:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204

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 August 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