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## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

### **FIRST NOTICE OF COMMENT PERIOD**

LSA Document #05-296(SWMB)

## **DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 10 CONCERNING CONSTRUCTION/DEMOLITION WASTE AND CERTAIN PERMITTING REQUIREMENTS**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 329 IAC 10 concerning unrecognizable, crushed construction/demolition waste and changes to permitting requirements mandated under Senate Enrolled Act 279-2005. 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.

**AUTHORITY:** IC 4-22-2; IC 13-10-4-8; IC 13-14-8-1; IC 13-14-8-2; IC 13-14-9; IC 13-15-2; IC 13-19-3-1; IC 13-19-4-1; IC 13-19-4-6; IC 13-30-2.

### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

#### **Basic Purpose and Background**

An amendment to 329 IAC 10-9-3 is proposed that provides that construction/demolition waste must be easily recognizable as such, and not crushed, in order to be disposed of in a construction/demolition landfill. This amendment is needed in the Indiana solid waste rules because some businesses have been completely crushing large volumes of construction/demolition waste and shipping it by railcar to some of Indiana's neighboring states, causing environmental and health problems that Indiana should avoid. The construction/demolition landfills in our neighboring states, much like Indiana's landfills, are not constructed to receive such large volumes of dense waste. These types of landfills are not constructed with either leachate or gas collection lines, or a plastic liner. The disposal of large volumes of dense waste, specifically crushed wall board, has caused hydrogen sulfide to be produced at these landfills sometimes to the extent that nearby schools and businesses have had to be temporarily closed, and the integrity of the landfill has been compromised.

This rulemaking will also amend the permitting requirements in 329 IAC 10 to include statutory revisions that were passed by the Indiana Legislature in Senate Enrolled Act 279-2005. These changes include the following:

1. Good character requirements do not apply to the transfer of a permit for a solid waste disposal facility to an applicant that holds a permit for and is operating a solid waste disposal facility or hazardous waste facility in Indiana after December 31, 2004, except as provided in IC 13-19-4-8(c). The implementing amendment is proposed to be added at 329 IAC 10-13-5(d).
2. Good character requirements are applied depending on the percentage of change in ownership control for a solid waste disposal facility. Good character requirements do not apply to renewals. The implementing amendments are proposed to be added under the permit transfer rule at 329 IAC 10-13-5(e) and (f).

#### **Alternatives To Be Considered Within the Rulemaking**

##### **Alternative 1. Adding a requirement for construction/demolition waste to be easily recognizable and not crushed; amending permitting requirements.**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. The amended permit requirements are mandated by state law.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

##### **Alternative 2. Adding requirements for the construction/demolition landfills to be designed, constructed, and operated as municipal solid waste landfills in order to accept the massive quantities of unidentifiable, pulverized waste; amending permitting requirements.**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. The amended permit

requirements are mandated by state law.

- Is this alternative imposed by federal law or is there a comparable federal law? No, however, any landfill that accepts municipal solid waste must meet the requirement of 40 CFR 258.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences. N/A

**Alternative 3. Adopt only the permit requirements mandated by state law; no changes regarding construction/demolition waste.**

- 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? N/A
- If it is different, describe the differences. N/A

**Applicable Federal Law**

These amendments are not applicable under federal law, only state law.

**Potential Fiscal Impact**

**Potential Fiscal Impact of Alternative 1.** Regarding new construction/demolition waste requirements, IDEM cannot estimate the potential fiscal impact of this alternative at this time. IDEM solicits comment on the potential fiscal impact of this alternative.

**Potential Fiscal Impact of Alternative 2.** Regarding new construction/demolition waste requirements, this alternative will be very expensive to implement. The most updated cost projection to permit and construct a municipal solid waste landfill is \$80,000-100,000 /acre.

**Potential Fiscal Impact of Alternative 3.** Regarding new construction/demolition waste requirements, this alternative will not have any fiscal impact.

**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](http://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](mailto: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](mailto:elevenha@idem.in.gov)

**Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, 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.
- (3) The submission of information on the fiscal impact of Alternative #1 in this Notice.

Mailed comments should be addressed to:

#05-296(SWMB) [Amendment to 329 IAC 10 for C/D waste and changes to permitting requirements]

Marjorie Samuel

Rules, Outreach, and Planning Section

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204.

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 Rules, Outreach, and Planning Section at (317) 232-7995.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by November 30, 2005.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach, and Planning Section, Office of Land Quality, (317) 232-3775 or (800) 451-6027 (in Indiana).

Bruce H. Palin

Assistant Commissioner

Office of Land Quality