

Document: IC 13-14-9 Notice, **Register Page Number:** 29 IR 3138

Source: June 1, 2006, Indiana Register, Volume 29, Number 9

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

LSA Document #06-145(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING TEMPORARY STORAGE OF SPENT LEAD ACID BATTERIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 3.1 concerning temporary storage of spent lead acid batteries. This rulemaking will propose requirements for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities. 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 3.1-11-2; 329 IAC 3.1-11.1; IC 13-20-16.

AUTHORITY: IC 4-22-2; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Under the current rule at 329 IAC 3.1-11-2(3), owners or operators of facilities that store whole spent lead acid batteries before reclaiming them are subject to the general RCRA notification and storage requirements. IC 13-20-16 currently regulates spent lead acid battery recycling by retailers, wholesalers, and manufacturers. The proposed rule would provide requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spent lead acid batteries is also proposed to be regulated.

The proposed definition of “spent lead-acid battery” includes any lead-acid battery being discarded, abandoned, and/or disposed, making it more consistent with the statutory (IC 13-20-16) reference to “used” lead-acid batteries.

The proposed rules are consistent with Indiana’s environmental requirements and are basic common sense storage practices. Spent lead-acid battery reclaimers would be allowed to stage whole spent lead-acid batteries on incoming trailers for up to ten (10) days on an asphalt or concrete surface maintained in good condition. Management practices, which include mainly inspection and maintenance requirements, would be required to be met during the staging period.

The proposed rule would require intermediate storage facilities that accumulate more than five thousand (5,000) kilograms of spent lead-acid batteries to notify IDEM of the storage location which is consistent with the notification requirements for large quantity handlers of Universal Waste (40 CFR 273 Subpart C).

Closure requirements will apply to the regulated intermittent storage areas allowing for the utilization of current Risk Integrated System of Closure (RISC) guidance performance standards. The proposed rule also indicates that corrective action may be initiated at any time during the life of the facility.

Requirements for transporters of spent lead-acid batteries are also being clarified under this proposal.

Alternatives to be Considered Within the Rulemaking

There are two (2) alternatives to accomplish the purposes of this notice.

IDEM is considering the following alternatives in this rulemaking, as follows:

Alternative 1. IDEM can add to and amend the requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, and other storage facilities to prevent releases to the environment. This rulemaking would also make the existing statutory and federal requirements fit better with the actual practices at regulated entities.

- *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?* IDEM is clarifying and expanding on applicable federal regulations. 40 CFR 266; Sections 3006 and 3009 of RCRA and 40 CFR 271.

- *If this alternative is a federal requirement, is it different from federal law?* Federal law regulates storage of spent lead acid batteries prior to reclamation only at the reclamation facilities. IDEM is proposing to add and amend requirements for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, intermediate storage facilities and reclamation facilities, as it makes sense for protecting the environment.

- *If it is different, describe the differences.* Same as above.

Alternative 2. IDEM can leave the existing rules as is without making changes to 329 IAC 3.1. Existing minimal requirements would still exist in the Indiana code and the federal regulations. Not changing the rules would leave the state rules adaptable to actual practices by regulated entities and would not allow the ten day staging period or address management issues that IDEM feels should be clarified.

- *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?* No.

- *If it is different, describe the differences.* Not applicable.

Applicable Federal Law

Sections 3006 and 3009 of RCRA and 40 CFR 271 require states that choose to administer and enforce a hazardous waste management program, in lieu of the federal program, to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA Administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn.

The proposed rulemaking is not less stringent than federal rules. By this rulemaking, IDEM is adding requirements and clarifying existing rules.

Potential Fiscal Impact

Alternative 1 is not required to be adopted under federal law and may potentially have the following fiscal impact:

Potential Fiscal Impact of Alternative 1.

This alternative will generally result in minimal fiscal impact on affected parties. In fact, this rulemaking may result in savings through the allowance for staging for spent lead acid batteries. Requirements for intermittent storage of spent lead acid batteries during recycling may have some impact on facilities that are not currently managing that storage under the proposed standards. IDEM will not have to hire additional staff for compliance and enforcement purposes and will be able to utilize existing resources to administer the rule.

Alternative 2 is not required to be adopted under federal law and will have the following fiscal impact:

Potential Fiscal Impact of Alternative 2.

This alternative will not have any fiscal impact since nothing will be changed.

IDEM specifically solicits comments on any potential fiscal impact that may result from the proposed 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 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

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 Kiran Verma, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-8899 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 the alternatives identified in this notice.

Mailed comments should be addressed to:

#06-145(SWMB) [Spent Lead Acid Battery Staging Rule]

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality, MC65-45

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 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 June 30, 2006.

Additional information regarding this action may be obtained from Kiran Verma, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).

Bruce Palin

Deputy Assistant Commissioner

Office of Land Quality