TITLE 329 SOLID WASTE MANAGEMENT BOARD
#01-161(SWMB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM requested public comment from June 1, 2002, through July 1, 2002, on IDEM=s draft rule language. IDEM received comments from the following parties:

Vincent L. Griffin, Indiana Chamber (ICC)
C. Michael Pitts, Indiana Petroleum Marketers and Convenience Store Association (IPCA)
Patrick M. Gorman, Indiana Steel Environmental Group (ISEG)
Catherine Gibbs, Lee & Ryan (L & R)

Following is a summary of the comments received and IDEM=s responses thereto:

Comment: We appreciate the agency's intentions behind the proposal. These intentions may be largely wasted, however, because the proposal does not respond to the main practical issues facing the UST section. Portions of the proposal are also likely to cause confusion regarding the meaning of the agency's non-binding "RISC" policy. (ICC)(ISEG)

Response: The agency=s intention was to clarify parts of the rule that have been a problem for both the regulated community in understanding and compliance and a problem for the agency in implementation, protectiveness or consistency with the federal rules.

Comment: The first step in revising IDEM's UST regulations needs to be a clear definition of the practical problem. Thanks to design improvements over the past decades, the great majority of underground storage tanks do not leak and are not an environmental problem. Where leaks have occurred, mostly in older units containing gasoline and other petroleum products, extensive nationwide experience shows that the environmental problems are typically limited and that the sites will clean themselves over time through natural attenuation of chemical constituents. For example, the National Research Council recently reported that "natural processes have been used alone, without engineered steps to enhance them, <u>at more than 15,000 sites</u> where fuels from underground storage tanks have leaked into groundwater." NRC, Natural Attenuation for Groundwater Remediation, p. 1 (National Academy Press 2000) (emphasis added). IDEM estimates on its web site that Indiana currently contains "about 4,000" underground storage tanks that have leaked. Of these, the agency describes 10% as "high priority" sites, which includes sites where "drinking water may be impacted." The key objective is to separate the relative handful of high priority sites from the great majority of sites that are routine or that have no leaks at all. This separation is also important to the environment because it allows environmental professionals to focus their time and resources where they are needed. This separation is important to the economy of Indiana. It allows the great majority of UST sites to be returned quickly to productive use. This separation is also important to state government. The state is facing a major budget crisis and has already asked its employees to cut back on hours on a voluntary basis. IDEM simply cannot provide maximum scrutiny to every UST site without sacrificing its ability to do its job in other areas. The practical problem is that IDEM's UST regulations have done a poor job of making this separation. (ICC)(ISEG)

Response: IDEM agrees that the state and federal regulations requiring upgrades to UST systems has greatly reduced the number of releases of petroleum products. IDEM also agrees that natural attenuation is a viable option for obtaining closure for a cleanup. IDEM recently published a draft non-rule policy document titled AMonitored Natural Attenuation for Petroleum Contaminated Sites.@ The draft document can be found on the LUST web site at http://www.IN.gov/idem/land/lust/index.html. It will be finalized in the near future. However, not all sites are candidates for using MNA alone. U.S. Environmental Protection Agency, Office of Underground Storage Tanks reported on March 31, 2002, that about 423,000 release reports have been documented nationally. Of those, about 277,000 have been cleaned up. Based on the number you quoted from the NRC report of 15,000 sites, only 5% of the UST releases used monitored natural attenuation (MNA) for ground water. The comment seems to imply that only Ahigh priority@ sites should require cleanup and that all other sites should simply use natural attenuation. IDEM does have a simple prioritization scheme to ensure that the worst sites receive attention first. To say that low and medium priority sites do not require cleanup, it incorrect. The comment did not say whether source removal was used at the sites in the NRC report. In most circumstances, source removal is needed. As always, early detection and quick response often keeps low and medium priority sites from becoming high priority. However, the Risk Integrated System of Closure (February 2001) and Ground Water Quality Standards (327 IAC 2-11) are the appropriate policy and law, respectively, for evaluating risk and whether corrective action is needed, not the UST rule. IDEM does allocate resources to address high, medium and low priority sites. Just because the state is in a budget crisis, it is not a reason to abandon IDEM law and policy at the expense of public health and the environment. The Leaking Underground Storage Tank (LUST) program is funded by EPA grant money and dedicated funds generated by UST fees, penalties and cost recovery. No Ageneral fund@ dollars are spent to administer the IDEM LUST program. As for putting properties back into use, IDEM dedicates significant resources to facilitate reuse. However, IDEM has no control over whether a lending institution chooses to grant a loan and does not approve or deny property transfer and redevelopment. IDEM believes that the LUST program is effective at keeping LUST sites in compliance and facilitating closure. IDEM continues to streamline LUST processes and maximize state resources.

Comment: Two regulatory provisions are primarily responsible for this lack of separation. First, the regulations require a "site investigation and corrective action" if any individual soil sample shows total petroleum hydrocarbons (TPH) of more than 100 ppm. when a UST is being closed. 329 IAC 9-6-2(c)(1). Second, this "site investigation and corrective action" is also required if any groundwater sample shows a chemical constituent present in any detectable concentration. 329 IAC 9-6-2(a)(3) Each of these regulatory provisions is also reflected in the current version of the agency's non-binding RISC guidelines. The RISC User's Guide identifies 100 ppm TPH as, not just a trigger for further investigation, but as the "default" cleanup standard for soil (page 3-6). Similarly, the User's Guide states that a wide-ranging "nature and extent determination is required" for any constituents reported in groundwater at minimum laboratory quantitation limits. (page 3-4). What this means in practice is that essentially all UST closures are forced into a costly, detailed study of soil and groundwater - a level of study that is appropriate for the handful of high priority sites with leaking tanks but that is overkill to apply on a routine basis. (ICC)(ISEG)

Response: The UST rule is being revised to make it consistent with the RISC policy

(effective February 16, 2001). The current draft rule repeals 329 IAC 6-2 and is replaced with 329 IAC 6-2.5. Both 329 IAC 9-4 (Releases) and 5 (Corrective Action) are being revised as well to make them consistent with RISC. All references to TPH testing were deleted in the rule. In addition, RISC does not specifically require TPH analyses under most circumstances. IDEM is currently assessing risk associated with ATPH@ as a revision to RISC. This revision to RISC is expected to be finalized in 2003.

To suggest that only Ahigh priority@ sites should require investigation and corrective action and that addressing lower priority sites is Aoverkill@ is invalid. Decisions about corrective action are only as good as the information IDEM has. In many cases, low priority sites are found to be medium or high priority once site characterization activities are conducted. In addition, IDEM=s prioritization scheme for LUST sites is designed for resource allocation and not to say that Alow and medium priority@ sites have no risk. In conclusion, the UST rule is written with respect to Asite investigation and corrective action@ to provide flexibility:

1. 329 IAC 9-5-5.1 requires the submission of an Initial Site Characterization while 329 IAC 9-5.5.1(c) allows for alternative procedures. Under many circumstances, a complete ISC is not required and only minor information is requested.
2. 329 IAC 9-5-6(a) says that a Further Site Investigation may be required in order to determine the full extent of soil and ground water contamination. The information gathered is used to determine whether corrective action is necessary.
3. 329 IAC 9-5-7(a) says that the commissioner may require submission additional information or a Corrective Action Plan. 329 IAC 9-5-7(f)(2) and (3) state that the soil and ground water objectives must be risk-based as mandated by IC 13-12-3-2.

Comment: IDEM has acknowledged in public meetings that the 100 TPH standard for soil is preventing closure from occurring at many sites and that a higher threshold, "in the thousands of ppm," would still be protective. Similarly, costly and time consuming groundwater investigations are currently being required based on initial sample results that show water quality better than tap water, better than natural background, and better than the state's groundwater quality standards. IDEM's current proposal does not acknowledge or respond to this practical problem. This omission essentially ensures that UST closures will continue to be needlessly slow and costly, and that future rounds of rulemaking will be necessary. (ICC)(ISEG)

Response: IDEM acknowledges that the cleanup objective in the 1994 UST Branch Guidance Manual for on-site site contamination is 100 ppm TPH. Several years ago, IDEM initiated the process of developing a Arisk-based@ approach for closure in response to the ASTM ARisk-based Corrective Action (RBCA)@ guidance, encouragement from U.S. EPA and support from the regulated community. The end result of this process was RISC. The published RISC Transition policy allows owners and operators using old guidance to transition to RISC. The RISC policy is designed to quantify and qualify risk to human health and the environment that is less restrictive than the 1994 Guidance. Currently, the LUST program approves many sites for LUST closure using 1994 Guidance when the soil and/or ground water corrective action guidelines are exceeded based on IDEM=s experience with petroleum releases and how they behave, and site specific conditions. As stated earlier, the need for corrective action or not cannot be assessed without knowing the extent of the problem, i.e. decisions are only as good as the information provided to IDEM. To make decisions regarding corrective action and closure without adequate information would be contrary to government and industry policies and standards including, but not limited to Superfund Risk Assessments Guidelines (RAGs), RISC,

ATSM RBCA, and Indiana Code (IC 13-12-3-2). IDEM disagrees that UST closures are needlessly slow and costly. As always, rules change as needs change. IDEM concurs that future revisions of the UST rule will be necessary, but probably not for the reasons you state.

Comment: . We strongly encourage the agency to respond to this practical problem by incorporating the following language in the rule for evaluating initial soil and groundwater data:
329 IAC 9-6-2.5 Closure Procedure

(a)(2) Closure sampling, laboratory analysis with the associated detection limits for the UST system closure are required as follows...

(D) Sampling to further characterize the site is required if TPH concentrations in any single soil sample are above 4,000 ppm. Sampling to further characterize the site is required if constituent
concentrations in any single groundwater sample exceed applicable groundwater quality standards. The Commissioner may also require further sampling based on site-specific information that soil or groundwater pose an environmental risk.

This type of language will separate the potential priority sites, which require further investigation, from the large number of sites where a simple and routine closure process is appropriate. The last sentence of the suggested language above would provide IDEM with flexibility to identify sites for further study based on site-specific factors.
To apply this kind of flexible rule language, IDEM could and should use its experience and its written statements of policy or guidance. (ICC)(ISEG)

Response: IDEM strongly disagrees with the suggestion to incorporate the recommended language into 329 IAC 9-6-2.5. There is no scientific basis for the concentration of 4,000 ppm TPH. Indiana Code 13-12-3-2 prohibits this approach as it is not risk-based. It also does not address the issue of releases discovered in ways other than UST closure such as environmental data collected as a result of a suspected release or prior to property transfer as a Phase 2 Environmental Assessment. As stated in previous comments, to equate the LUST prioritization scheme with risk is incorrect and decisions about corrective action and closure cannot be assessed without knowing the nature and extent of contamination. Admittedly, data gathered during a UST closure or Phase 2 environmental assessment may be adequate to make this assessment, but not always. Finally, a change to 4,000 ppm TPH would also be inconsistent with government and industry standards and policies.

Comment: But the agency's current proposal takes a very different approach. In about half a dozen locations, the proposal would "require" facilities to "comply" with a recent guidance document, the "Risk Integrated System of Closure" or "RISC." (Example: "The sampling must meet... the exposure criteria established under RISC"). These references to the RISC policy are likely to cause serious confusion. It's unclear what it means to "require" compliance with a policy statement that was not written as a force of law regulation. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: For example, the RISC policy explains that it provides only a "default" approach that may be used at essentially any site, but that any particular facility may follow "nondefault" approaches instead. According to the policy, "the nondefault process is not, by definition, superior or inferior to the default process. Nondefault procedures may be more

applicable or advantageous for use at a particular site, and closure may be granted for nondefault approaches, when appropriate." (RISC Technical Support Document, p. 1-4). In its current proposal, does IDEM intend that facilities must comply only with the "default" approach under RISC? If so, this is a requirement that the RISC policy itself rejects. If not, then what does it mean to require compliance with a policy that says, on its face, that other approaches may be more applicable or advantageous for use at particular sites, and may be used at such sites? (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule. It was never IDEM=s intention to require anyone to follow a default approach and as stated in the comment the RISC Guidance provides flexibility to allow non-default approaches.

Comment: More generally, RISC consists of several hundred pages of text and appendices divided between two volumes. It is not appropriate to incorporate this enormous amount of text in the state regulations. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: IDEM issued its RISC policy one year ago, and its practical value remains unclear. IDEM has not provided any objective statistics about the performance of the program to date. The UST program apparently has completed few if any closures under RISC, in part due to the 100-ppm requirement for TPH. At least one IDEM program reports that it-has not performed any "default" investigations under RISC. At this point, RISC does not have a proven track record that would warrant its incorporation in the state's regulations. (ICC)(ISEG)

Response: IDEM is preparing a report to provide information on the number of RISC reviews that have been completed since January of this year. It is important to remember that the transition period for RISC did not end until February of this year and it is not unusual for an UST review to take a significant amount of time to work through the complete process. Given these time frames it is not surprising that very few sites have been closed under the RISC guidance. In order to respond to the specific concern of referencing RISC in the rule all references to RISC have been deleted.

Comment: Finally, IDEM often refers to RISC as a Aliving document@ that will undergo continual improvement based on experience. By contrast, the document would become frozen in place upon incorporation in the Indiana regulations, which requires reference to a specific version of the document on a fixed date. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: IDEM's first notice of proposed rulemaking, at 24 Ind. Reg. 2917 (June 1, 2001), stated that the rule under development would "clarify language in the existing rule <u>without</u> adding new requirements." (Emphasis added). In fact, the agency's proposal includes several apparently new regulatory requirements. These include:

329 IAC 9-3-1(c)(12)-(15)

new record keeping requirements for manufacturer's information; for results of sampling, testing, and monitoring; and for documentation of calibration, maintenance, and repairs.

329 IAC 9-3.1-2(3)(B)

new testing requirements for cathodic protection systems

329 IAC 9-3.1-4(b)(2)

new prohibition on continued use of a tank after maintenance has been performed on 30% of the original lined surface

329 IAC 9.3.1-4(b)(6)

new testing requirements following maintenance of corrosion protection systems

No reason is provided by the agency for these changes. Consistent with the first notice, these new requirements should be withdrawn. (ICC)(ISEG)

Response: 329 IAC 9-3-1(c)(12)-(15) This is not a new requirement; it was moved from 329 IAC 9-7-6. It made sense to put this record keeping requirement in the Reporting and Recordkeeping section. 329 IAC 9-7-6 was repealed.

329 IAC 9-3.1-2(3)(B) The federal regulations at 40 CFR 280.31(b)(1) requires that all cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the department. The state rules needed to clarify that requirement because it was not clear that the testing was for all types of tanks requiring cathodic protection. This is not an additional requirement because an owner/operator would have had to test under the federal requirements.

329 IAC 9-3.1-4(b)(2) The state rule clearly states that a tank can=t be relined. This means that any tank that needed relining would have to be replaced instead. This new provision, however, allows for up to 30% relining before the tank must be replaced.

329 IAC 9.3.1-4(b)(6) The department agrees and did not intend to make the testing requirement for maintenance. The words Aand maintenance@ will be deleted in this subdivision only.

Comment: IDEM proposes to allow electronic reporting for UST closures but states that any "documents submitted in an electronic format must also be submitted as a paper copy." 329 IAC 9-3-2 (proposed). The requirement for a separate paper copy defeats the purpose of electronic reporting. The costs of this duplication are shared by the facility, which must generate the paper copies, and by IDEM, which must receive, process, and store the paper versions. Electronic documents in Acrobat PDF format provide exact electronic duplicates of paper copies. These documents are widely used and relied upon in commerce. Numerous IDEM programs rely on data that is submitted in electronic form only. IDEM's UST program should do the same. 329 IAC 9-3-2 Electronic Reporting and Submittal - page 2909; The IPCA appreciates that this rule would allow submission of electronic reports. However, to require that said reports also be submitted as a paper copy defeats the purpose of electronic filing and does not reduce the time and paperwork burdens these rules impose at all. The paper copy provision can and should be deleted. If IDEM is concerned about receipt of electronic submittals, a process can be built-in to verify the agency has received the information. (ICC)(ISEG)(IPCA)

Response: The Federal Government is encouraging states to set up systems and rules that allow for electronic reporting and electronic records. 40 CFR 3 is a new, proposed rule by the Environmental Protection Agency that sets the standards for electronic reporting. Because the state rules are opened for changes infrequently, the department determined that this rulemaking was the best vehicle for adding what will be a common place requirement in the future and start facilities thinking about doing business electronically. Remember, it is an option for facilities to submit electronically; the department is laying the groundwork for electronic submissions and reporting. As electronic reporting becomes more common, paper copies will not be needed.

However, the department is also gearing up and the paper copies, which are a necessity now, can probably be phased out in the future.

Comment: 329 IAC 9-1-1 (f) Applicability - page 2901; In this section, and elsewhere in these proposed rules, the Risk Integrated System of Closure (RISC) standards are fully incorporated as the only standards for remediating UST releases. RISC is still evolving at this point and our industry has numerous concerns about its applicability and appropriateness for the typical gasoline station clean-up. This rule would forever lock in RISC, which exists merely as a non-rule policy and is subject to change by IDEM at any time. Thus, we are being asked to make a great leap of faith in this regard. The IPCA requests that this section be amended to reflect a commitment from IDEM that any changes to RISC affecting petroleum UST remediations will be thoroughly discussed with industry stakeholders prior to implementation. (IPCA)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule. IDEM has provided multiple opportunities for input into the RISC Guidance and such opportunities continue to exist. Any group that would like to meet with staff to discuss the RISC Guidance and the need for revisions or clarifications is encouraged to do so at anytime.

Comment: 329 IAC 9-3-1(c)(12)(13)(14)(15) Reporting and Recordkeeping - page 2909; These new sections would add extensive new recordkeeping requirements to an already burdensome rule. The IPCA finds these additions to be extremely vague, yet amazingly expansive in their scope. There are several references to "all" and "any" documents of various types, which must be kept for the "longest time period" possible. We seriously question the necessity for, and the benefits gained to be gained, from such onerous recordkeeping requirements and whether anything will truly be accomplished by them. The UST owner already has numerous financial and other reasons to insure that his leak detection systems are operating properly. Let's not distract him with additional new and burdensome paperwork requirements. (IPCA)

Response: This is not a new requirement; it was moved from 329 IAC 9-7-6. It made sense to put this recording keeping requirement in the Reporting and Recordkeeping section. 329 IAC 9-7-6 was repealed.

Comment: Section 329 IAC 9-3-1 (d) Reporting and Recordkeeping - Page 2909; IDEM is proposing changes to this section regarding availability of records. The IPCA does not oppose the changes being made but, they do not address a more important issue faced by UST owners. Despite many protests from this Association and others, IDEM staff have persisted in showing up unannounced for routine UST inspections at gasoline/convenience store operations where there may only be one or two clerks on duty. Records are better kept at company offices and or this reason the IPCA was instrumental in amending, this rule several years ago to add item (2). However. that has not kept IDEM from being overbearing in their demands for instantaneous production of documents when they've shown up unannounced. For this reason, the IPCA proposes the following changes to this section, as follows:
(d) The owner and operator shall maintain the records required: (1) at the underground storage tank site and ~~immediately~~ available for inspection by the agency **upon at least three (3) business days advance notice; or** (2) at a readily available alternative site and be provided **within three (3) business days** for inspection to the agency ~~upon request~~. (IPCA)

Response: The Indiana Statute at IC 13-14-2-2 allows a designated agent, upon

presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any of the following:..... (3) Environmental management laws.....(8) any rule adopted by one (1) of the boards. This statute does not require prior notification of an impending inspection. According to 329 IAC 9-3-1(d)(2) the owner and operator shall maintain the records required at a readily available alternative site and be provided for inspection to the agency upon request. The records are necessary to perform adequate inspections. The records can be kept at an alternative site, however to do a proper inspection, the records need to be available as soon possible upon request by the inspector. Compliance with this requirement can save the state money because the inspector is not sitting around waiting for records to arrive, but can inspect a facility as it normally does business. Further, Indiana=s rule language must be at least as stringent as the federal regulation.

Comment: 329 IAC 9-3.1-2(b) Operation and Maintenance of Corrosion Protection - page 2910; Corrosion protection systems are normally tested shortly after installation. Our reading of new section (b) is that testing upon installation is "within" six (6) months. If the intent of this new language is to require a new test at the six (6) month interval, then IPCA would oppose this requirement as unnecessary in light of existing section (a) which requires inspection every sixty (60) days to ensure operation. (IPCA)

Response: Your reading is correct.

Comment: 329 IAC 9-3.1-4 Repairs and Maintenance Allowed - page 2910; The word "maintenance" is added numerous times throughout this entire section, yet it is not defined. Maintenance is a vague term which could be interpreted to include many very minor and routine functions which, per section (7), must then be documented. The vagueness involved creates a compliance nightmare which is coupled with onerous new paperwork requirements. The IPCA, again, does not see the benefits to be gained from this addition of extensive new regulatory requirements. (IPCA)

Response: AMaintenance@ is defined in the Underground Storage Tank rules at 329 IAC 9-1-29. The addition of Amaintenance@ to 329 IAC 9-3.1-4 does not add additional requirements but an allowance for maintenance to be accomplished. This is a benefit. In 329 IAC 9.3.1-4(b)(6), the department agrees and did not intend to make the testing requirement on maintenance. The words Aand maintenance@ will be deleted in this subdivision only.

Comment: 329 IAC 9-5-5.1 (b) Initial Site Characterization - page 2914; RISC is much more complex than existing UST clean-up standards and requires more time for lab results, etc. The IPCA requests that this section be amended to allow for submission of initial site characterizations in sixty (60) days rather than the forty-five (45) days presently allowed. (IPCA)

Response: It is a requirement in the federal regulations that the initial site characterization (ISC) at 40 CFR 280.63(b) must be submitted within 45 days of release confirmation or another reasonable period of time determined by the implementing agency. The implementing agency believes that 45 days is an adequate time for the owner and operator to submit the ISC. To help expedite the submittal, IDEM has adjusted the requirements for the ISC to what will provide the necessary information without holding up the submittal. The department is confident that information can be obtained for the ISC, written and submitted within 45 days. Further site information and more in-depth testing can be done later.

Comment: 329 IAC 9-5-5.1(b)(2)(E)(viii)(EE) ISC - Soil Borings - page 2915; The IPCA objects to the addition of this new requirement regarding horizontal accuracy for soil boring locations. Presently, tape measure reading are adequate. To achieve the kind of accuracy contemplated by this proposed change would necessitate the involvement of a surveyor at LUST sites which are generally small parcels of land. The IPCA strongly recommends keeping this rule as is. (IPCA)

Response: The department is not asking for the accuracy that the commentor seems to envision. This measurement is done as the soil borings are done. The rule does not require that a certified surveyor make the measurement.

Comment: 329 IAC 9-5-7(a)(f) Corrective Action Plan - page 2916/2917; The IPCA strongly objects to the proposed deletion of the language regarding deemed approved corrective action plans. This is provided for by statute and should remain in the rules. Additionally, we encourage IDEM to allow at least ninety (90) days for submission of Corrective Action Plans rather, than the current sixty (60) days, due to the complexities involved with RISC. (IPCA)

Response: The language that allows for Corrective Action Plans to be approved is found under the excess liability trust fund allowances. This statute directs IDEM on what can be reimbursed for corrective action taken on underground storage tanks. This does not set the standards for corrective action plans for underground storage tanks. Regarding the current sixty (60) days, this is a policy and cannot be found in the rule. The rule says in 329 IAC 9-5-7(a) that, AIf a (corrective action) plan is required, the owner and operator shall submit the plan according to a schedule established by the commissioner.....@ The corrective action plans are submitted according to a schedule established by the commissioner, which in the past has, as a policy, been sixty (60) days. However if an owner and operator can show that additional time is needed the commissioner can grant ninety (90) days for the CAP submittal without changing the rule. The current rule language leaves flexibility for the owner and operator to ask for longer times as necessary.

Comment: 329 IAC 9-6-2.5(a)(5)(7) Closure Procedure - page 2919; RISC is more extensive and requires additional tests, etc. Therefore, the IPCA requests that this section be amended to allow forty-five (45) days for the submission of closure reports and for the submission of additional information which may subsequently be required. (IPCA)

Response: Because this is not a federal requirement and because the department is not sure the extent RISC will increase the time needed to complete a closure report, IDEM agrees with the commentor and will amend the thirty (30) days required to submit a closure report. New language will allow for the closure report to be submitted within forty-five (45) days.

Comment: 329 IAC 9-6-2.5 (3) Water Samples - page 2921 The IPCA is opposed to the addition of item (3) requiring soil borings to continue to "a depth where a ground water sample can be obtained." In some areas of Indiana, this could require borings as deep as 60 to 70 feet down. When you bore that far down, contamination found could come from anywhere. The IPCA believes that the requirements of section (2) are reasonable but, section (3) should be deleted. (IPCA)

Response: The department will clarify the rule. 329 IAC 9-6-2.5(e)(3), (f)(5), and (g)(3) will be changed to read, AIf groundwater is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum of thirty (30)

feet.@

Comment: 329 IAC 9-1-14.3 "Contaminant" defined: Lee & Ryan believes that this definition is too broad and suggests that the definition of "contaminant" reference the definition of "regulated substance" contained in IC 13-11-1-183. (L&R)

Response: The Indiana Code at 13-23-1-2(5) says that the rules adopted by the solid waste management board must have requirements for underground storage tanks to prevent future releases of regulated substances into the environment. However, (3) requires the reporting of **any** release. The use or reference to Aregulated substance@ only differs by excluding regulated hazardous waste. The exclusion for Aregulated hazardous waste@ was added to the definition of Acontaminant.@

Comment: 329 IAC 9-1-41.3 "RISC"defined: Lee & Ryan suggests that this definition include a reference to the number assigned to the RISC non-rule policy document. (L&R)

Response: All references to RISC have been deleted in the proposed rule.

Comment: 329 IAC 9-5-7 Corrective Action Plan: Lee & Ryan is specifically concerned about the requirement in (f)(1)(B)(ii). Will this information be necessary if the owner or operator chooses to use the default option under RISC? (L&R)

Response: All references to RISC have been deleted in the proposed rule.