Rule Information Sheet

Underground Storage Tanks Compliance Dates
LSA Document #18-281

Overview
In LSA Document #16-204, the Environmental Rules Board adopted updates to the underground storage tank (UST) requirements at 329 IAC 9 that incorporated by reference selected provisions of the federal UST requirements in 40 CFR 280. The incorporation by reference also included future compliance deadlines with the updated UST requirements that were linked to the effective date of the United States Environmental Protection Agency (U.S. EPA) final rule promulgated on July 15, 2015. The Indiana Department of Environmental Management (IDEM) intended to include extensions of these compliance dates to align the compliance dates with the effective date of LSA Document #16-204, but mistakenly did not include the amendments in that rulemaking. As a result, the adopted compliance deadlines either occurred before the effective date of LSA Document #16-204 or are too soon in the future to provide an adequate amount of compliance time for regulated entities.

In response to this situation, this rulemaking proposes amendments to 329 IAC 9-1-1 to correct and extend the compliance dates in the federal UST requirements that were incorporated by reference in LSA Document #16-204. The extension of compliance dates will provide an adequate amount of compliance time for regulated entities to meet the updated UST requirements and reduce the administrative burden on IDEM to monitor compliance with and enforce the requirements. In addition, the rulemaking proposes amendments to 329 IAC 9-8 that clarify the applicability of the financial assurance requirements and remove outdated compliance dates for financial assurance. Because of the limited scope and nature of these amendments, which only serve to clarify existing Indiana rules and will not have a substantive effect on the application of the existing rules, IDEM is proceeding with this rulemaking under the abbreviated rulemaking process authorized in IC 13-14-9-8.

IDEM has proposed one change to the proposed rule language since the publication of the Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8 and Draft Rule (DIN: 20180718-IR-329180281FDA). At 329 IAC 9-1-1(d)(10), IDEM has added an exception for 40 CFR 280, Subpart J, to the extension of a compliance date from October 13, 2018, to June 28, 2021. IDEM is proposing to maintain the current compliance date of October 13, 2018, for the UST operator training requirements at 40 CFR 280, Subpart J, because IDEM previously had UST operator training requirements at 329 IAC 9-9 that were replaced when 40 CFR 280 was incorporated by reference in LSA Document #16-204 and 329 IAC 9-9 was repealed. IDEM does not want a three-year gap to exist for UST operator training requirements by delaying compliance to June 28, 2021. Also, because UST operators already were required to meet similar UST operator training requirements, UST operators should not have difficulty meeting the October 13, 2018, compliance date for these requirements.
In addition, IDEM is presenting a related emergency rule for adoption at the November 14, 2018, board meeting because some of the compliance dates proposed for amendment in this rulemaking will occur before the anticipated effective date of March 2019 for LSA Document #18-281. In order for these compliance dates to be effective before the dates pass, an emergency rule is necessary to amend and make effective the compliance dates. Additional information about the emergency rule is available in the board packet documents for that rulemaking.

Affected Persons
The persons that are primarily affected by this rulemaking are the owners and operators of USTs. As of August 2018, IDEM currently regulates 1,912 owners and operators of USTs, who operate 4,139 UST sites with a total of 13,111 USTs.

Reasons for the Rule
IDEM initiated this rulemaking in response to inquiries from regulated entities and internal department observations about the compliance dates that were adopted in LSA Document #16-204. IDEM intended to propose extensions to the compliance dates in the federal UST requirements that were incorporated by reference in LSA Document #16-204, but IDEM mistakenly did not include specific amendments for this intent. Because the current compliance dates in 329 IAC 9 are based on the effective date of the 2015 U.S. EPA final rule that updated the federal UST requirements, some dates have passed and others are too near in the future for regulated entities in Indiana to realistically meet the compliance deadlines. In order to provide adequate compliance time for regulated entities and also avoid unnecessarily excessive compliance monitoring and enforcement burdens for IDEM, this rulemaking proposes the extension of the compliance dates in the federal UST requirements that were incorporated by reference.

Economic Impact of the Rule
This rulemaking does not propose any substantive amendments to existing requirements or add new requirements that will create additional compliance costs for regulated entities. Regulated entities already are required to comply with the requirements that are affected by this rulemaking, as the requirements were adopted in LSA Document #16-204 and the rulemaking is only clarifying and providing additional compliance time for existing requirements in 329 IAC 9.

The rulemaking may result in short-term cost savings for regulated entities by extending the compliance dates for federal UST requirements that were incorporated by reference in LSA Document #16-204. The extension of the compliance dates may reduce the short-term economic impact of the requirements by allowing regulated entities to delay or distribute the cost of compliance over three additional years. However, the extension of compliance dates only delays any incurred compliance costs with the UST requirements to a later date, rather than resulting in long-term cost savings or an overall change in the annual economic impact of the UST requirements in 329 IAC 9.

Scheduled Board Action and Hearings
Public Hearing: November 14, 2018
IDEM Contact
Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345, (800) 451-6027 (in Indiana), or dwatts1@idem.in.gov.