

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Hazardous Waste Financial Assurance
LSA Document #14-287

Overview

The Indiana Department of Environmental Management (IDEM) is proposing amendments to the hazardous waste financial assurance rules at 329 IAC 3.1-14 and 329 IAC 3.1-15. The main rule amendments include the following:

- Addition of specific and detailed requirements for financial assurance at hazardous waste facilities subject to corrective action.
- Correcting errors in the wording of Indiana's financial assurance forms to make the wording consistent with the federal financial assurance forms.
- Addressing outdated rule language that does not comport with current rule drafting standards.

These amendments will add detail and clarity for existing rules and statutes regarding corrective action financial assurance at hazardous waste facilities and maintain consistency with analogous federal requirements. Financial assurance for corrective action at hazardous waste facilities is required under federal statute at 42 U.S.C. §6924(a)(6) and (u). Indiana statute at IC 13-22-8-1 requires the Environmental Rules Board to adopt rules for corrective action financial assurance at hazardous waste facilities. Federal rules at 40 CFR 264.101, which are incorporated by reference at 329 IAC 3.1-9-1, require "assurances of financial responsibility" for completing corrective action at hazardous waste facilities. Also, guidance documents prepared by the United States Environmental Protection Agency (U.S. EPA) provide additional detail on the implementation of these existing statutory and rule requirements. This rulemaking will clarify and specify the corrective action financial assurance requirements under the current statutes, rules, and guidance.

In addition, the amendments to the wording of the financial assurance forms will make the forms consistent with the wording of the federal financial assurance instruments at 40 CFR 264.151. Maintaining consistency with federal hazardous waste rules is an important aspect of administering Indiana's authorized state hazardous waste program, which operates under the authority granted by U.S. EPA.

IDEM has made changes to the draft rule proposed for preliminary adoption since the publication of the second notice of comment period. Based on the comments received during the second comment period, IDEM has decided to allow a surety bond guaranteeing payment as a financial assurance option for corrective action. Related changes are made in 329 IAC 3.1-14-4, 329 IAC 3.1-14-6, 329 IAC 3.1-14-27, and 329 IAC 3.1-15-4. IDEM also has amended 329 IAC 3.1-14-6(d), 329 IAC 3.1-14-16(d), 329 IAC 3.1-15-4(c)(4), and 329 IAC 3.1-15-6(c)(4) to clarify the requirements for funding a standby trust fund for a surety bond guaranteeing payment. Other

changes in the draft rule are based on recommendations from the Legislative Services Agency to comply with rules drafting standards. An example is changing the spelling of “acknowledgement” to the American English standard of “acknowledgment”.

Affected Persons

Persons mainly affected by this rulemaking include owners and operators of hazardous waste facilities and hazardous waste corrective action sites that are required to establish and maintain financial assurance for corrective action. Financial institutions that issue financial assurance instruments to regulated entities are potentially affected if an owner or operator of a hazardous waste facility seeks changes to the instruments issued by a financial institution.

Reasons for the Rule

The first notice of comment period for this rulemaking was published in 2014 and the main goals have changed since the initial notice was published. Internal discussions, the drafting of revisions, and departmental changes in rulemaking priorities have delayed progress with the rulemaking as originally noticed. As a result, IDEM has decided to narrow the focus of the rulemaking from broader, comprehensive changes to narrower, specific changes that address the most significant issues in Indiana's hazardous waste financial assurance rules and are based on current statutes and rules. The most significant issues in the hazardous waste financial assurance rules include the lack of specific and detailed information for corrective action financial assurance, errors and inconsistencies in the wording of the financial assurance forms, and outdated rule language. These issues have created difficulties for regulated entities to comply with certain rule provisions and for IDEM to effectively administer these provisions. Conducting a rulemaking is the most prudent way to resolve these issues because other compliance or enforcement strategies have not been an effective solution.

Economic Impact of the Rule

The rulemaking is anticipated to have a minimal economic impact because IDEM is adding detail and clarity for requirements that regulated entities are currently subject to under existing rules and statutes. Regulated entities will not be subject to new requirements that create additional compliance costs and additional entities will not be required to comply with the proposed rule changes upon the effective date of the rule. The technical amendments, such as the corrections to errors in the financial assurance form wording and updated rule language to comport with current rules drafting standards, will not create additional compliance costs. With the proposed changes, the hazardous waste financial assurance rules will be easier to follow and understand, which may reduce administrative costs for regulated entities and improve IDEM's efficiency with implementing and enforcing the rules.

Scheduled Board Action and Hearings

First Public Hearing: November 18, 2020, at 1:30 p.m., through Zoom

*Join Zoom Meeting

<https://zoom.us/j/93846345845?pwd=eklqWHVKRk1LU1hGMVVzaStldDVxZz09>

By phone:

312-626-6799

929-205-6099

Meeting ID: 938 4634 5845

Password: 963768

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.