

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Solid Waste Financial Assurance
LSA Document #20-20

Overview

In this rulemaking, the Indiana Department of Environmental Management (IDEM) proposes amendments to 329 IAC 10-39, 329 IAC 11.5-3, 329 IAC 11.5-8, 329 IAC 11.6-9, and 329 IAC 11.7-9 for the financial assurance requirements pertaining to solid waste facilities. The amendments include resolving inconsistencies in the financial assurance rules across different articles in Title 329, correcting errors in the rule language, revising and clarifying outdated requirements, making changes to improve the administration of the financial assurance requirements, and providing additional compliance flexibility and options for regulated entities. The proposed amendments are intended to address specific issues in the rule language and requirements rather than be a comprehensive revision of the solid waste financial assurance rules.

Specific amendments proposed in the rulemaking include the following:

- The addition of the option for an alternative to maintaining a standby trust fund for financial assurance amounts under \$20,000 for certain financial assurance mechanisms.
- Changes to allow for the following:
 - A financial assurance provider's operations to be regulated by either a federal agency or state agency rather than both.
 - A notary public to be commissioned in the state that notarization occurs rather than only commissioned in Indiana.
- The addition of rural electric membership corporations to the utility exemption for a portion of the requirements for the restricted waste sites financial test.
- The addition of insurance as an option for corrective action financial assurance for municipal solid waste landfills.
- The addition of more specific requirements for the following:
 - The annual inflation adjustment for the corrective action cost estimate.
 - Updating the closure or corrective action cost estimate when a change in the respective plans increases the cost of closure or corrective action.
- For the financial tests, requiring the letter from the chief financial officer to be submitted on forms approved by the commissioner.
- Deletion of the requirements to submit a duplicate copy of the financial assurance instrument throughout 329 IAC 10-39.
- Clarification of the financial assurance obligations in 329 IAC 11.5 for a facility with a confined feeding operation approval or concentrated animal feeding operation permit.
- Clarifications, corrections, and reorganization throughout the included sections, such as:
 - Correcting inaccurate cross references.
 - Clarifying imprecise phrasing of rule language.

- Deleting nonessential wording in requirements.
- Adding information for accessing documents cited in the rule requirements.
- Various wording and organizational changes throughout the rules to conform with rule drafting standards.

Suggested Changes since Preliminary Adoption

Since the preliminary adoption of the rulemaking, IDEM has made additional changes to the rule proposed for final adoption. The addition of similar provisions at 329 IAC 10-39-2(a)(2)(C)(vi), 329 IAC 10-39-2(a)(3)(B)(v), 329 IAC 11.5-8-1(d)(2)(E), 329 IAC 11.6-9-1(c)(2)(E), and 329 IAC 11.7-9-1(c)(2)(E) require the establishment of a standby trust fund if the permittee, owner, or operator has total financial assurance obligations of \$20,000 or more for all facilities that use a surety bond or a letter-of-credit, if available, for financial assurance. The intent of this requirement is to prevent the permittee, owner, or operator from avoiding the establishment of a standby trust fund if they use a separate surety bond or letter-of-credit for each facility but still have \$20,000 or more in financial assurance obligations. Based on available compliance information, all regulated entities potentially affected by this provision currently maintain a standby trust fund and should not experience a fiscal impact.

In addition, IDEM has made minor corrections and updates to rule language that were identified by the Legislative Services Agency and IDEM staff. Examples of these amendments include changing “evaluations to “valuations” at 329 IAC 10-39-2(a)(1)(B)(iii) and “no later than” to “not later than” throughout 329 IAC 10-39-10(b).

Affected Persons

IDEM anticipates that this rulemaking will affect the owners and operators of solid waste facilities that are required to maintain financial assurance and potentially affect the financial institutions that provide financial assurance to the facilities. The affected facilities include solid waste disposal, solid waste processing, biomass anaerobic digestion, mobile home salvaging, and alternative fuel. Financial institutions are affected if a solid waste facility requests a change to their financial assurance instrument based on the compliance options and alternatives made available in the rulemaking. Lastly, IDEM may experience some changes to internal administrative and compliance procedures resulting from the compliance options and alternatives in the rule amendments. The changes IDEM may experience will mostly improve efficiency in how IDEM monitors compliance and administers the rule requirements.

Reasons for the Rule

The rulemaking was initiated to resolve errors, inconsistencies, and potentially confusing requirements in the solid waste financial assurance rules that have resulted from outdated requirements or piecemeal amendments in previous rulemakings. In addition, changes in the solid waste industry and environmental regulations have created novel scenarios that the current rules do not address, so amendments that offer additional compliance options and flexibility could improve the efficacy of the financial assurance rules.

Economic Impact of the Rule

This rulemaking will offer various opportunities for potential cost savings for regulated entities and is likely to have a beneficial economic impact. Most of the amendments are corrections, clarifications, and changes for compliance with rule drafting standards or for consistency with associated rules. These technical amendments and corrections will not have an associated fiscal impact. Other amendments will allow more options and alternatives for compliance with the financial assurance requirements rather than create additional requirements. Because the rulemaking is not imposing additional requirements, but instead making technical amendments and corrections and providing additional compliance flexibility, IDEM expects the rulemaking to result in cost savings opportunities for regulated entities. However, IDEM is unable to determine the exact amount of the beneficial fiscal impact because IDEM cannot predict how many entities will pursue the compliance options and alternatives and the amount of cost savings for each entity. In summary, the economic impact from the rulemaking will be beneficial for regulated entities that take advantage of the available compliance options and alternatives.

Scheduled Board Action and Hearings

First Public Hearing: May 12, 2021, at 1:30 p.m., through Zoom.

Second Public Hearing: August 11, 2021, at 1:30 p.m., at the Indiana Government Center North, 100 North Senate Avenue, Conference Room IGCN 1319, Indianapolis, Indiana, and through Zoom:

*Join Zoom Meeting

<https://us06web.zoom.us/j/87921936763?pwd=RVJQVElTZ0VsdHE2NnVVREpUR0Nldz09&from=addon>

By phone:

301-715-8592

312-626-6799

Meeting ID: 879 2193 6763

Passcode: 649397

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, at dwatts1@idem.in.gov, (317) 234-5345, (800) 451-6027 (in Indiana).