

## TITLE 329 SOLID WASTE MANAGEMENT DIVISION

### LSA Document #20-24

#### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from June 2, 2021, through July 2, 2021, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana Cast Metals Association (INCMA)  
Indiana Chapter of the National Waste and Recycling Association (IN NWRA)  
Indiana Manufacturers Association (IMA)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* The list of fees in 329 IAC 10-11-8 includes the word "Other" for New, Major Modification, and Renewal in a list of fees to be charged. The commenter respectfully requests that language be inserted into the draft rule to clarify that the term "Other" does not include Type IV in annual waste permitting fees, modifications, and renewals. (INCMA)

*Response:* IDEM appreciates the commenter's concern and for bringing this matter to the agency's attention. The "Other" category was inadvertently included into the draft rule language and has been removed from the draft rule.

*Comment:* The commenter suggests that Incinerators and Municipal/Non-municipal Solid Waste Landfills (>500 TPD) be subject to the same Annual Operation Fee. (IN NWRA)

*Response:* The Annual Operation Fees for Municipal or Nonmunicipal Solid Waste Landfills (>500 Tons Per Day) and Incinerators can be found in the draft rule at 329 IAC 10-11-8(b). Fees were determined after conducting an analysis of current fee revenue and the costs associated with permitting that are incurred by IDEM.

IDEM is statutorily required to raise fees for the solid waste and hazardous waste permitting programs and water-related programs so that total fee revenue is increased by \$3,200,000 as compared to the year preceding the increase. IDEM determined that fee increases for the solid waste and hazardous waste permitting programs would account for \$1,715,595 of the total increase. Meeting this target was also taken into consideration when determining the fee increases outlined in this proposed rule.

*Comment:* As the fees proposed in LSA #20-24 are specifically intended to regulate hazardous and solid waste activities listed in the document, we trust that the new fees will be utilized for that purpose and not subject to expenditures on other non-waste activities. (IN NWRA)

*Response:* Pursuant to IC 13-16-1-5, the fees collected under this rulemaking shall be deposited in the environmental management permit operation fund under IC 13-15-11. The fund provides money for permitting and directly associated activities in accordance with IC 13-15-11-1(b).

*Comment:* In general, the amount of the fee increases across the board is excessive. While the commenter understands the need to increase the fees, the percentage increase for each of the categories is unreasonable. We request that IDEM reconsider and lower the percentage increases for each category by at least half and consider staggering further increases on a five- to 10-year basis. (IMA)

*Response:* IDEM is sensitive to the commenter's concerns, however, the current fees have not been raised in twenty-five years and are insufficient to cover the costs of operating the programs. Public Law 250-2019 requires the Environmental Rules Board (board) to increase fees for solid waste and hazardous waste programs, along with fees for water-related programs, by an aggregate amount of \$3,200,000 greater than the aggregate fee revenue actually received in the year immediately preceding the proposed fee increases. IDEM's proposed increase for solid waste and hazardous waste program fees is approximately \$1,715,595 out of the total \$3,200,000. This share of the total increase was determined by conducting an analysis of current fee revenue and associated costs incurred by IDEM between both water programs and solid and hazardous waste programs.

Current law requires the board to adopt these fee increases by January 1, 2023. Public Law 250-2019 establishes that the board may not change these fees more than one time in five years. Therefore, the commenter's suggestion that the fee increases be a lower percentage increase and be staggered over a five to ten year basis would not be permissible under current law. Any decrease in a proposed fee would necessitate an increase of another fee so that IDEM would meet its statutory obligation of raising an additional \$3,200,000 in revenue as compared to the year prior.

*Comment:* It is unreasonable and curious why the application fees for new permits are not also being increased when permit renewal fees are being increased. It is understandable that there likely are not many, if any, new hazardous waste permit applications currently being submitted to IDEM. However, it is not reasonable for IDEM to charge a lower fee to review an application for a new facility than it charges for a permit renewal or Class 3 modification. It is highly likely, if not certain, that IDEM will need to spend more time processing a new permit application than it does processing a renewal or Class 3 modification. If no fee increase is proposed for new permit applications, then a lesser fee increase for permit renewals and modifications than currently proposed is justified. (IMA)

*Response:* The purpose of this rulemaking is to fulfill the statutory requirement of acquiring \$3,200,000 in additional fee revenue as compared to the revenue received in the year prior to the increase. Based on an analysis of current fee revenue and associated costs incurred by IDEM, the agency determined that an increase in fees associated with just the solid waste and hazardous waste programs should result in the agency collecting an additional \$1,715,595.

As the commenter noted, there are very few new hazardous waste permit applications currently being submitted to IDEM. Specifically, between Fiscal Year (FY) 2017 and FY 2020, only one of these types of applications was submitted to IDEM. Given that new applications are so rare, it does not make fiscal sense for IDEM to increase these fees when the purpose of the increase is to raise revenue. Instead, to raise the statutorily required amount of new revenue, IDEM has opted to increase fees on permitting services that are more often utilized and also more costly to the agency. Lowering these types of fees, as the commenter suggested, would likely result in the agency being unable to fulfill its statutory requirement.

*Comment:* The proposed new 329 IAC 3.1-1-14.1(c) should be removed from the proposed rule because it is duplicative of already existing authority. The per ton hazardous waste disposal fee amount and payment requirements already exist pursuant to Ind. Code 13-22-12-3.5. Therefore, restating the statutory requirement in the regulation is unnecessary and could create confusion in the event either the governing statute or the regulation is modified in the future. (IMA)

*Response:* The commenter is correct that language nearly identical to the proposed 329 IAC 3.1-1-14.1(c) can be found at IC 13-22-12-3.5. Nearly all the language in this proposed rulemaking can be found in various locations in statute with changes being made to the fee amounts. The purpose of this rulemaking is to adhere to the statutory requirements of Public Law 250-2019 and incorporate fees that currently exist in statute into the Indiana Administrative Code (IAC) so that they may be increased or decreased by the Environmental Rules Board within certain statutory parameters. If this rulemaking is promulgated, the commenter is correct that there will be duplicative and conflicting language in statute and in the IAC. However, it will be the responsibility of the Indiana General Assembly to correct this issue by repealing the conflicting sections in statute in accordance with IC 13-16-1-5.5(b).

*Comment:* To both increase permit fee collection and assist regulated entities, the commenter suggests that IDEM include a new expedited permit fee category with fees above the regular permit fees. This would provide an option for a regulated entity to request expedited permit reviews for a premium over and above the regular scheduled permit fee. (IMA)

*Response:* IDEM appreciates the commenter's proposal and may consider an expedited permit review system with an additional fee in the future. However, this particular rulemaking is limited to the scope of fulfilling the requirements of Public Law 250-2019 by incorporating existing fees for solid waste and hazardous waste programs into the Indiana Administrative Code and increasing those fees to acquire an additional \$1,715,595 in revenue as compared to the year preceding the increase. Therefore, IDEM will not be incorporating an expedited permit review system with an additional fee into this rulemaking.