

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

Bold and single underline = new language added since preliminary adoption

Bold, strikeout, and single underline = new language at preliminary adoption that is being deleted

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

PROPOSED RULE AS PRELIMINARILY ADOPTED WITH IDEM'S SUGGESTED CHANGES INCORPORATED

LSA Document #24-322

DIGEST

Adds 329 IAC 15-5-8.5 and amends 329 IAC 15-2-13 and 329 IAC 15-5-1 concerning statutory changes and financial assurance for waste tire management. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: September 11, 2024, Indiana Register (DIN: 20240911-IR-329240322FNA).

Notice of First Hearing: September 11, 2024, Indiana Register (DIN: 20240911-IR-329240322PHA).

Regulatory Analysis: September 11, 2024, Indiana Register (DIN: 20240911-IR-329240322RAA).

Date of First Hearing: December 11, 2024.

Notice of Second Hearing: December 25, 2024, Indiana Register (DIN: 20241225-IR-329240322PHA).

Date of Second Hearing: March 12, 2025.

329 IAC 15-2-13; 329 IAC 15-5-1; 329 IAC 15-5-8.5

PROPOSED RULE

SECTION 1. 329 IAC 15-2-13 IS AMENDED TO READ AS FOLLOWS:

329 IAC 15-2-13 "Used tire" defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-11-2-243.5; IC 13-30-2; IC 36-9-30

Sec. 13. "Used tire" means a tire that meets all of the following criteria: **has the meaning set forth in IC 13-11-2-243.5.**

(1) ~~The tire is suitable for use on a motor vehicle as follows:~~

(A) ~~The tire has two thirty seconds ($\frac{2}{32}$) inch of remaining tread, or the tire wear bars are not exposed.~~

(B) ~~The tire has no cuts, slashes, or exposed cord.~~

~~(2) The tire is stored in a rack, stack, or row.~~

~~(3) The tire is stored out of the weather to prevent accumulation of water or precipitation in the tires.~~

(Solid Waste Management Division; 329 IAC 15-2-13; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319; errata filed Oct 23, 2000, 9:50 a.m.: 24 IR 688; readopted filed Nov 30, 2006, 4:16 p.m.: 20061227-IR-329050168FRA; readopted filed Jul 18, 2012, 2:26 p.m.: 20120815-IR-329120206BFA; readopted filed Jun 6, 2018, 1:57 p.m.: 20180704-IR-329180170BFA; readopted filed Oct 16, 2024, 11:58 a.m.: 20241113-IR-329230812RFA)

SECTION 2. 329 IAC 15-5-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 15-5-1 Financial assurance for waste tire storage sites

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owner or operator of a waste tire storage site shall do the following:

(1) Submit the financial assurance information on forms provided by the department.

(2) Prepare and submit to the department a closure cost estimate ~~in accordance with~~ **under** sections 3 and 3.5 of this rule.

(3) Fund the financial assurance mechanism before the initial operation of the waste tire storage site.

(4) Submit proof that the financial assurance mechanism designates the department as the beneficiary.

(5) Maintain financial assurance for removal of waste tires and final closure of the site, in an amount equal to or greater than the closure cost estimate, using one (1) of the following mechanisms:

(A) A trust fund ~~in accordance with~~ **under** section 5 of this rule.

(B) A surety bond ~~in accordance with~~ **under** section 6 of this rule.

(C) A letter of credit ~~in accordance with~~ **under** section 7 of this rule.

(D) Insurance ~~in accordance with~~ **under** section 8 of this rule.

(E) The corporate financial test under section 8.5 of this rule.

(6) Maintain financial assurance for removal of waste tires and final closure of the site as required by this rule until the commissioner releases the owner or operator of the waste tire storage site from financial assurance ~~in accordance with~~ **under** section 12(a) of this rule.

(b) If changes to the provisions of an established and previously approved financial assurance mechanism are required by the department or requested by the owner or operator, the changes may be made without:

(1) establishing a new financial assurance mechanism; or

(2) updating to the most recent financial assurance forms.

This subsection does not preclude any requirement in this rule to establish a different financial assurance mechanism or change the provider of financial assurance. *(Solid Waste Management Division; 329 IAC 15-5-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329; filed Nov 30, 2006, 4:16 p.m.: 20061227-IR-329050168FRA; readopted filed Jul 18, 2012, 2:26 p.m.: 20120815-IR-*

329120206BFA; readopted filed Jun 6, 2018, 1:57 p.m.: 20180704-IR-329180170BFA; filed Nov 28, 2022, 10:42 a.m.: 20221228-IR-329170279FRA; readopted filed Oct 16, 2024, 11:58 a.m.: 20241113-IR-329230812RFA)

SECTION 3. 329 IAC 15-5-8.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 15-5-8.5 Corporate financial test for waste tire storage sites

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-20-13-11; IC 13-30-2; IC 36-9-30

(a) An owner or operator of a waste tire storage site that meets the requirements of this section for the corporate financial test may demonstrate financial assurance for the amount specified in sections 3 and 3.5 of this rule.

(b) An owner or operator shall meet the following financial requirements for the corporate financial test:

(1) The owner or operator shall satisfy one (1) of the following conditions:

(A) A current rating for their senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's.

(B) A ratio of less than 3:2 comparing total liabilities to net worth.

(C) A ratio of greater than 1:10 comparing the sum of net income plus depreciation, depletion, and amortization, minus ten million dollars (\$10,000,000), to total liabilities.

(2) The tangible net worth of the owner or operator must be greater than the following:

(A) The sum of the current closure cost estimates and any other environmental obligations, including guarantees, covered by a financial test, plus ten million dollars (\$10,000,000), except as provided in clause (B).

(B) Ten million dollars (\$10,000,000) in net worth plus the amount of any guarantees not recognized as liabilities on the financial statements, if all the current closure costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the commissioner.

(3) The assets of the owner or operator located in the United States must amount to at least the sum of current closure cost estimates covered by a financial test, as described in subsection (d).

(c) An owner or operator shall comply with the following record keeping and reporting requirements for the corporate financial test:

(1) The owner or operator shall maintain the following items onsite at the waste tire storage site:

(A) A letter signed by the owner's or operator's chief financial officer that includes the following:

(i) A list of all the current cost estimates covered by a financial test, including the closure cost estimates required for waste tire facilities under this rule.

(ii) Evidence demonstrating the firm meets the conditions of:

(AA) subsection (b)(1)(A), (b)(1)(B), or (b)(1)(C); and

(BB) subsection (b)(2) and (b)(3).

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion is cause for disallowance, with the potential exception for qualified opinions as follows:

(i) The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the matters that form the basis for the qualification are insufficient to warrant disallowance of the test.

(ii) If the commissioner does not allow use of the test based on the evaluation of qualified opinions, the owner or operator shall provide alternative financial assurance that meets the requirements of this rule.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing the owner or operator satisfies subsection (b)(1)(B) or (b)(1)(C) that are different from data in the audited financial statements referred to in clause (B) or any other audited financial statement or data filed with the relevant state or federal agency, the owner's or operator's independent certified public accountant is required to provide a special report to the owner or operator that must:

(i) be based on an agreed upon procedures engagement in accordance with professional auditing standards; and

(ii) describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements, findings of that comparison, and reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in subsection (b)(2)(B), the letter must include a report from the independent certified public accountant verifying:

(i) all the environmental obligations covered by a financial test are recognized as liabilities on the audited financial statements;

(ii) how these obligations are measured and reported; and

(iii) the tangible net worth of the firm is at least ten million dollars (\$10,000,000), plus the amount of any guarantees provided.

(2) The owner or operator shall maintain the items specified in subdivision (1) onsite

at the waste tire storage site and notify the commissioner that these items are onsite before initially receiving waste tires or before the effective date of the requirements of this section, whichever is later, in the case of closure.

(3) After the effective date of this section, an owner or operator that switches to a financial test from an alternative financial assurance mechanism shall maintain the items specified in subdivision (1) onsite at the waste tire storage site and notify the commissioner that these items are onsite before canceling the alternative financial assurance.

(4) After the initial placement of items specified in subdivision (1) onsite at the waste tire storage site, the owner or operator shall annually update the information in all the required items within ninety (90) days after the close of the owner's or operator's fiscal year. The commissioner may provide up to an additional forty-five (45) days for an owner or operator that demonstrates ninety (90) days is not enough time to acquire the audited financial statements.

(5) The owner or operator is no longer required to submit the items specified in this subsection and comply with the requirements of this section when either of the following occur:

(A) The owner or operator substitutes alternative financial assurance as specified in this rule that is not subject to the record keeping and reporting requirements of this subsection.

(B) The owner or operator is released from the requirements of this rule under section 12(a) of this rule.

(6) If the owner or operator no longer meets the requirements of subsection (b), the owner or operator shall, within one hundred twenty (120) days after the close of their fiscal year, do as follows:

(A) Obtain alternative financial assurance that meets the requirements of this rule.

(B) Maintain onsite at the waste tire storage site the required submissions for the alternative financial assurance.

(C) Notify the commissioner that the owner or operator no longer meets the criteria of the financial test and has obtained alternative financial assurance.

(7) Based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (b), the commissioner may require at any time the owner or operator to provide reports of their financial condition, in addition to or including current financial test documentation as specified in this subsection. If the commissioner finds the owner or operator no longer meets the requirements of subsection (b), the owner or operator shall provide alternative financial assurance as set forth under subdivision (6).

(d) When calculating the current cost estimates for closure, or the sum of the combination of those costs to be covered, the owner or operator shall include cost estimates required for other waste tire facilities under this rule, if ~~it assures them~~ the owner or operator assures the facilities through a financial test. (*Solid Waste Management Division; 329 IAC 15-5-8.5*)