TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

Rule Information Sheet

Excess Liability Trust Fund
LSA Document #15-231

Overview
This rulemaking proposes amendments to 328 IAC 1 concerning requirements for the Excess Liability Trust Fund (ELTF) for underground storage tanks. ELTF provides a mechanism for the cost reimbursement of emergency measures, investigation, corrective action, and ELTF indemnity claims resulting from eligible releases from underground storage tanks. The rules at 328 IAC 1 provide definitions and requirements for the administration, eligibility criteria, prioritization, claim payment, and other aspects of the ELTF program. The main focus of this rulemaking is to align the rule requirements with the statutory changes in Public Law 96-2016 from the 2016 session of the Indiana General Assembly and Public Law 200-2017 from the 2017 session of the Indiana General Assembly. The amendments to align with the legislative changes include the following:

- Modification, deletion, and addition of definitions and statutory citations to comport with the legislative changes.
- Deletion or modification of sections that are repetitive or potentially in conflict with the statutory changes.
- Changes to the requirements for access to ELTF and payment of ELTF claims, which will allow more eligible parties and eligible releases to apply for payment from ELTF.
- Elimination of requirements for eligible parties to deduct penalties, interest, and certain fees from the ELTF claim payment amount.
- Allow cost reimbursement for services performed in preparation of ELTF claims.

In addition to the legislative changes, the rulemaking addresses outdated, inaccurate, confusing, or repetitive rule requirements and improves the accuracy and clarity of the rule language. These amendments are made throughout 328 IAC 1, as necessary. When this rulemaking is completed, there will be improved consistency between the statutory requirements and rule requirements while also making corrections and improvements to the rule language.

Suggested Changes since Preliminary Adoption
The rulemaking proposed for final adoption contains some suggested changes since the preliminary adoption of the draft rule that are in response to comments that were received during the preliminary adoption hearing on August 10, 2017. At 328 IAC 1-1-3.2, the proposed definition for “cost effectiveness” is deleted because the Indiana Department of Environmental Management (IDEM) agrees with a commenter’s suggestion that the proposed definition is vague and does not clarify IDEM’s procedures for determining cost effectiveness. The existing procedures for determining cost effectiveness in 328 IAC 1 will remain in the rulemaking. At 328 IAC 1-3-1(c), a commenter suggested that the amended requirements are vague and do not

clarify the requirements for situations in which multiple parties claim reimbursement for the same activity at the same incident. IDEM has combined 328 IAC 1-3-1(c) and (d) to clarify the requirements in that section.

Affected Persons

This rulemaking will affect persons that are owners or operators of underground storage tanks, eligible parties as defined at IC 13-11-2-62.5, or any other person assigned the right of reimbursement for an underground storage tank, which often includes environmental consulting services. In addition, any person that may receive payment from ELTF for cost reimbursements or ELTF indemnity claims resulting from the corrective action of eligible releases may be affected by this rulemaking. Because the rulemaking may require some changes to ELTF administrative processes, this rulemaking also affects IDEM staff in the ELTF program.

Reasons for the Rule

IDEM originally initiated this rulemaking to propose comprehensive amendments to the ELTF requirements in 328 IAC 1, with the goals of addressing long-standing issues with the rule requirements and improving the overall administration of the ELTF program. After the publication of the First Notice of Comment Period in 2015, the Indiana General Assembly enacted legislative changes to ELTF definitions at IC 13-11-2 and ELTF statutes at IC 13-23. In addition, independent actuarial studies identified issues with ELTF administration and the long-term financial forecast for ELTF. IDEM decided to shift the focus of the rulemaking to aligning the rule requirements with the legislative changes rather than propose comprehensive amendments. After the completion of this rulemaking, IDEM plans to initiate a subsequent rulemaking that proposes more comprehensive amendments to the ELTF rule requirements and accounts for the issues identified in the independent actuarial studies, including changes to reimbursable costs and activities.

Economic Impact of the Rule

The majority of the economic impact of this rulemaking derives from the statutory changes rather than amendments to the rule requirements that are unrelated to the statutory changes. Any economic impact to comply with the statutory changes should have been incurred after the effective date of the statutory changes, which was prior to the effective date of this rulemaking. Therefore, the amendments in the rulemaking to align with the statutory changes will not have an additional economic impact because any cost or benefit should have already occurred in order to comply with the statutory changes.

The statutory changes that are implemented in this rulemaking and have an economic impact include the following:

- Amending the eligibility requirements to allow more eligible parties to access ELTF and receive payment for ELTF claims.
- Simplifying and reducing the deductible amount to $15,000, which will lower compliance costs for eligible parties.
- Increasing the maximum payment limit from ELTF for each eligible release to $2,500,000 and for each eligible party to $10,000,000 annually.

- Eliminating the deduction of interest, penalties, and certain fees from the ELTF claim payment, which will increase the payment amount for affected ELTF claims.
- Allowing cost reimbursement for services performed in preparation of ELTF claims.

These statutory changes will result in expanded access to ETLF for more eligible parties, increased payments for some eligible parties, and a greater annual disbursement from ELTF. The exact amount of the beneficial impact is difficult to estimate because the amount is dependent upon the increase in eligible parties that apply for ELTF claims, the increase in payment amount for each claim, and the total number of claims that meet the increased maximum payment limits from the ELTF. Overall, eligible parties will experience an economic benefit from these changes by receiving greater ELTF claim payment amounts to a greater number of eligible parties.

Scheduled Board Action and Hearings
First Public Hearing: August 10, 2017, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Ave, Conference Center Room A, Indianapolis, Indiana.
Second Public Hearing: March 8, 2018, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Ave, Conference Center Rooms 1 and 2, Indianapolis, Indiana.

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.