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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION****SECOND NOTICE OF COMMENT PERIOD**

LSA Document #20-24

**SOLID WASTE AND HAZARDOUS WASTE PROGRAM PERMITTING FEES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 3.1-1-14.1](#), [329 IAC 10-11-8](#), [329 IAC 10-11-9](#), [329 IAC 11-9-4.1](#), and [329 IAC 15-3-4](#), and the repeal of [329 IAC 15-3-7](#) and [329 IAC 15-4-3](#) concerning solid waste and hazardous waste program permit fees. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**HISTORY**

First Notice of Comment Period: February 19, 2020, Indiana Register (DIN: [20200219-IR-329200024FNA](#)).

**CITATIONS AFFECTED:** [329 IAC 3.1-1-14.1](#), [329 IAC 10-11-8](#), [329 IAC 10-11-9](#), [329 IAC 11-9-4.1](#), [329 IAC 15-3-4](#), [329 IAC 15-3-7](#), [329 IAC 15-4-3](#).

**AUTHORITY:** [IC 4-22-2](#); [IC 13-14-9](#); [IC 13-16](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

HEA 1278, also referred to as Public Law 250-2019, was passed by the 2019 General Assembly to amend the process in [IC 13-16](#) concerning the adoption of environmental fees by the Environmental Rules Board (board). To establish or change the amount of a fee, the board is required to take into account the costs to IDEM for: (1) issuance or approval of a permit; (2) services in connection with supervision, review, and other activities related to the issuance or approval of a permit; (3) surveillance of the activity or property covered by the permit issuance or approval; (4) amendments, modifications, and renewals of a permit or approval; and (5) fees charged for equivalent activities in other states. IDEM is to assist the board in doing a periodic review of fees by: (1) arranging for an independent study of the costs that the board may consider; (2) developing information on fees charged for equivalent activities in other states; and (3) periodically developing information on activities, functions, and permits that have been added or eliminated since the previous fee structure was adopted. The board may direct IDEM to initiate a rulemaking under [IC 13-14-9](#) to address fees based on the information collected by IDEM and presented to the board. Public Law 250-2019 also establishes that the board may not change fees more than one time in five years and the fee increase may not amount to more than ten percent.

In addition to the process established in [IC 13-16](#) for future rulemakings to increase environmental fees, Public Law 250-2019 requires the board to adopt rules once before January 1, 2022, to increase the amount of the fees for waste-related programs under [IC 13-20-21](#) and [IC 13-22-12](#) along with fees for water programs under [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#) 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.

This rulemaking addresses the one-time fee increases required under Public Law 250-2019 for [IC 13-20-21](#) and [IC 13-22-12](#), regarding solid waste and hazardous waste, respectively. The fees associated with issuing permits, amendments, modifications, and renewals have not changed since 1996 for these fees. The legislatively allowed fee increase of an aggregate of \$3,200,000 is shared among the affected fees in the water and waste programs and in Titles 327 and 329. IDEM's decisions regarding the amount of the fee increases took into consideration the fees charged for similar activities in other states that are in the United States Environmental Protection Agency's Region 5 and Kentucky.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking in accordance with Public Law 250-2019. Additional information about the specific fee changes can be found at: [https://www.in.gov/idem/legal/files/rulemaking\\_fee\\_spreadsheet.pdf](https://www.in.gov/idem/legal/files/rulemaking_fee_spreadsheet.pdf).

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL element or elements):

The following information is provided with each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.
- (2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the

NIFL element exceeds the requirements of federal law.

(3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element (A) The increase of waste-related fees in accordance with Public Law 250-2019.

(1) The increase in fees is to support Indiana waste programs including federally delegated waste programs.

(2) The expected impact to regulated entities is a total of approximately \$1,715,595 in the next year and will provide benefits to the state's ability to operate the programs.

(3) Public Law 250-2019, IDEM - Permit Cost of Service Analysis, and IDEM Proposed Fee Increases.

#### **Potential Fiscal Impact**

This rulemaking has no fiscal impact beyond that imposed by Public Law 250-2019. It will result in a fiscal impact on regulated entities in increased fee amounts for waste-related activities of a total of approximately \$1,715,595 in the next year and a positive fiscal impact on the state in the same amount in collected fees. The increases in fees collected by IDEM will be used to fund its work of issuing permits to solid and hazardous waste facilities.

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Seth Engdahl, Rules Development Branch, Office of Legal Counsel at [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov), (317) 234-9535 or (800) 451-6027 (in Indiana).

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from February 19, 2020, through March 20, 2020, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the First Notice of Comment Period.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #20-24 Solid Waste and Hazardous Waste Program Permitting Fees

Seth Engdahl

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Indianapolis, IN 46204-2251

(2) By electronic mail to [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than July 2, 2021. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov), (317) 234-9535 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. [329 IAC 3.1-1-14.1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[329 IAC 3.1-1-14.1](#) Fees**

**Authority:** [IC 13-14-8](#); [IC 13-16](#); [IC 13-22](#)

Sec. 14.1. (a) The following definitions apply throughout this section:

- (1) "Boilers and industrial furnaces" or "BIFs" means facilities as defined under "boilers" and "industrial furnaces" in 40 CFR 260.10\*.
- (2) "Class 2 modification" refers to the modification classification system described under 40 CFR 270.42\*.
- (3) "Class 3 modification" refers to the modification classification system described under 40 CFR 270.42\*.
- (4) "Ground water monitoring well" means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.
- (5) "Land disposal" includes interim status and permitted hazardous waste landfills and interim status and permitted hazardous waste surface impoundments.
- (6) "Large quantity generator" has the meaning set forth in 40 CFR 260.10\*.
- (7) "Operation" or "operating" means the following:
  - (A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste is present in the unit as of January 1.
  - (B) A disposal unit that will close leaving waste in place is considered operating until the unit has permanently stopped receiving waste as of January 1.
- (8) "Storage" means the term as defined in 40 CFR 260.10\* and includes interim status and permitted hazardous waste storage.
- (9) "Treatment" means the term as defined in 40 CFR 260.10\* and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under 40 CFR 261.4\*, 40 CFR 261.6\*, and 40 CFR 262.14 through 40 CFR 262.17\*.

(b) In accordance with [IC 13-22-12-2](#) and [IC 13-22-12-3](#), Hazardous waste fees are as follows:

(1) New permit application fees are as follows:	
(A) Land disposal:	\$40,600
(B) Incinerator (per unit):	\$21,700
(C) Storage:	\$23,800
(D) Treatment (including boilers and industrial furnaces):	\$23,800
(2) Permit renewal and Class 3 modification fees are as follows:	
(A) Land disposal:	<del>\$34,000</del> <b>\$58,600</b>
(B) Incinerator (per unit):	<del>\$21,700</del> <b>\$37,400</b>
(C) Storage:	<del>\$17,200</del> <b>\$29,660</b>
(D) Treatment (including boilers and industrial furnaces):	<del>\$17,200</del> <b>\$29,660</b>
(3) Class 2 modification fee:	\$2,250
(4) Annual operation fees are as follows:	
(A) Land disposal:	<del>\$37,500</del> <b>\$50,000</b>
(B) Incinerator (per unit):	<del>\$10,000</del> <b>\$17,245</b>
(C) Storage:	<del>\$2,500</del> <b>\$4,300</b>
(D) Treatment (including boilers and industrial furnaces):	<del>\$10,000</del> <b>\$17,245</b>
(E) Large quantity generator:	<del>\$1,565</del> <b>\$2,500</b>
(F) Post-closure activity:	\$1,500
(G) Ground water compliance sampling at active facilities (per well):	<del>\$1,000</del> <b>\$2,100</b>

(c) For the disposal of hazardous waste in Indiana, the following requirements apply:

(1) Fees for hazardous waste disposal are as follows:

(A) For hazardous waste disposed of in a disposal facility, eleven dollars and fifty cents (\$11.50) per ton. If hazardous waste is mixed with or dissolved or suspended in water or another liquid at the time it is disposed of in a disposal facility, the entire mixture, solution, or suspension disposed of is

considered hazardous waste disposed of in a disposal facility for the purposes of this clause.

**(B)** For hazardous waste disposed of by underground injection, eleven dollars and fifty cents (\$11.50) per ton. A person required to pay disposal fees under this clause is not liable for more than twenty-five thousand dollars (\$25,000) in disposal fees under this clause for all hazardous waste disposed of by the person by underground injection in one (1) calendar year.

**(2)** Fees imposed under subdivision (1)(A) must be paid by the operator of the disposal facility at which the hazardous waste is disposed. For hazardous waste disposed of by underground injection at a location other than a disposal facility, the fee imposed on the disposal of the hazardous waste under subdivision (1)(B) must be paid by the person disposing of the hazardous waste.

**(3)** Fees imposed under this subsection begin accruing on January 1 of each year. The fees that accrue under this subsection during a calendar year must be paid to the department on or before March 1 of the following year.

**(4)** The fees imposed under this subsection must be based on the total tonnage of hazardous waste disposed. The fees do not apply to the treatment or storage of hazardous waste in a disposal facility.

**(5)** The fees paid to the department under this subsection must be handled in accordance with [IC 13-22-12-3.6](#).

~~(e)~~ **(d)** Requirements for application fees are as follows:

- (1) The fees must be submitted with the hazardous waste permit application.
- (2) The commissioner shall deny hazardous waste permit applications without the application fee.
- (3) The fees are not refundable once staff review of the application has commenced.

~~(d)~~ **(e)** The following requirements apply to persons or facilities subject to the annual operation fee schedule:

- (1) Annual operation fees established in [IC 13-22-12-3](#) apply to facilities listed in subsection (b) that:
  - (A) operate with a permit;
  - (B) operate under interim status;
  - (C) are a large quantity generator; or
  - (D) otherwise manage hazardous waste subject to regulation under [IC 13-22-2](#).
- (2) A hazardous waste management facility permitted as of January 1 of the assessed year must pay annual operation fees, even if not yet constructed or receiving waste.
- (3) Waivers for large quantity generators are prohibited.
- (4) A permitted treatment, storage, or disposal facility that has the ability to manage hazardous waste must pay the applicable fee, whether or not hazardous waste is being managed at the facility.
- (5) Permitted treatment and storage facilities that close by removing all waste are not required to pay a post-closure fee because the facility is no longer regulated.
- (6) Facilities that are issued a post-closure permit must pay the post-closure fee that is assessed for the duration of the post-closure period.
- (7) A person shall remit a hazardous waste annual operation fee or an installment allowed by subsection ~~(f)~~ **(g)** to the commissioner:
  - (A) no more than thirty (30) days after the date the fee is assessed; or
  - (B) by the date the installment is due.
- (8) A person or facility that is described in more than one (1) category under this section shall pay all applicable fees.

~~(e)~~ **(f)** The following requirements apply to hazardous waste annual operation fees:

- (1) Hazardous waste annual operation fees begin accruing on January 1 of each year.
- (2) The commissioner shall:
  - (A) assess hazardous waste annual operation fees not later than June 15 for the current year's activities; and
  - (B) base the assessment on a large quantity generator's previous year's activities as defined by the large quantity generator.

~~(f)~~ **(g)** Installment payments may be allowed as follows:

- (1) The commissioner shall allow a person to remit installments on the annual fee if:
  - (A) the person determines that a single payment of the entire fee is an undue hardship; and
  - (B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.
- (2) Installments paid on a:
  - (A) quarterly basis are due on:

- (i) February 15;
  - (ii) May 15;
  - (iii) August 15; and
  - (iv) November 15; or
- (B) semiannual basis are due on:
- (i) February 15; and
  - (ii) August 15.

(3) The commissioner shall not send a notice of the installment method to the person who notifies in subdivision (1)(B).

~~(g)~~ (h) In addition to the penalties described under [IC 13-30-4](#), the following requirements apply:

(1) A person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable, if the person does not remit a hazardous waste annual operation fee or an installment established under subsection ~~(f)(2)~~ (g)(2) within:

- (A) sixty (60) days after the date the fee is assessed; or
- (B) thirty (30) days after the date the installment is due.

(2) The delinquency charge described in subdivision (1) is due and payable:

- (A) sixty (60) days after the date the hazardous waste annual operation fee is assessed; or
- (B) thirty (30) days after the date the installment is due.

(3) The commissioner may revoke a person's permit if the person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge within:

- (A) ninety (90) days after the date the hazardous waste annual operation fee is assessed; or
- (B) sixty (60) days after the date the installment is due.

(4) Before revoking a person's permit under subdivision (3), the commissioner shall send a written notice by certified mail that:

- (A) describes what fees and delinquency charge are due; and
- (B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.

~~(h)~~ (i) The fees and delinquency charges collected under this section:

- (1) are payable to the department; and
- (2) must be deposited in the environmental management permit operation fund established under [IC 13-15-11](#).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

*(Solid Waste Management Division; [329 IAC 3.1-1-14.1](#); filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#); filed Nov 26, 2019, 11:36 a.m.: [20191225-IR-329180481FRA](#))*

SECTION 2. [329 IAC 10-11-8](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 10-11-8](#) Solid Waste Fees**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-16](#); [IC 13-19-3](#)

**Affected:** [IC 13-20-1](#); [IC 13-21-5](#); [IC 36-9-30](#)

**Sec. 8. (a) Except as provided in subsection (b), for solid waste permits, the application fees are as follows:**

	<b>New Permit or Major Modification</b>	<b>Fee</b>
<b>Construction/Demolition Site</b>		<b>\$20,000</b>
<b>Restricted Waste</b>		
	<b>Type I</b>	<b>\$31,000</b>
	<b>Type II</b>	<b>\$31,000</b>

	Type III	\$20,000
	Other	\$31,300
Incinerator		\$28,650
Municipal or Nonmunicipal Solid Waste Landfill		\$53,975
	Permit Renewal	
Construction/Demolition Site		\$12,330
Restricted Waste		
	Type I	\$26,500
	Type II	\$26,500
	Type III	\$12,330
	Other	\$26,500
Incinerator		\$10,175
Municipal or Nonmunicipal Solid Waste Landfill		\$26,500
	Minor Modification	
Minor Modification		\$4,300

(b) For solid waste, the annual operation fees are as follows:

Annual Operation Fees		Fee
Municipal or Nonmunicipal Solid Waste Landfill		
	Greater than 500 Tons Per Day (TPD)	\$45,000
	250-499 TPD	\$25,900
	100-249 TPD	\$12,070
	Less than 100 TPD	\$3,450
Construction\Demolition Site		\$2,590
Restricted Waste Site		
	Type I	\$41,250
	Type II	\$35,000
	Type III	\$15,000
Incinerator		
	Greater than 500 TPD	\$40,000
	250-499 TPD	\$15,000
	100-249 TPD	\$7,000
	Less than 100 TPD	\$2,000
Infectious Waste Incinerator (Great than 7 TPD)		\$5,000
Groundwater Compliance Sampling (per well)		\$400

(Solid Waste Management Division; [329 IAC 10-11-8](#))

SECTION 3. [329 IAC 10-11-9](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 10-11-9](#) Disposal fees**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-16](#); [IC 13-19-3](#)

Affected: [IC 13-20](#); [IC 13-21-5](#); [IC 36-7-4](#); [IC 36-9-30](#)

Sec. 9. (a) For solid waste, the disposal fees are as follows:

Solid waste disposal in:	Fee
Municipal solid waste landfill (per ton)	\$0.10
Nonmunicipal solid waste landfill (per ton)	\$0.10
Incinerator (per ton)	\$0.05
Construction/demolition site (per ton)	\$0.10

(b) There is no solid waste disposal fee for solid waste disposed into a solid waste landfill permitted to



accept restricted waste solely generated by the person to which the permit is issued.

(c) With respect to a municipal solid waste landfill, a nonmunicipal solid waste landfill, or a construction\demolition waste site:

- (1) located in a county that does not zone under [IC 36-7-4](#);
- (2) for which the department issues an original permit for construction after March 1, 2006; and
- (3) for which a host agreement has not been entered into under [IC 13-20-24](#);

the county fiscal body may establish a disposal fee that does not exceed two dollars and fifty cents (\$2.50) per ton, which applies in addition to the disposal fee established in subsection (a).

(d) A fee is imposed on the disposal or incineration of solid waste in a final disposal facility in Indiana. Except as provided in [IC 13-20-22-14](#), the amount of the fee is as follows:

- (1) For solid waste generated in Indiana, fifty cents (\$0.50) per ton.
- (2) For solid waste generated outside of Indiana, fifty-cents (\$0.50) per ton.

(e) If solid waste has been subject to a fee under this section, the total amount of the fee paid shall be credited against any other fee to which the solid waste may later be subject under this section.

(f) A fee may not be imposed upon material used as alternate daily cover pursuant to a permit issued by the department under [329 IAC 10-20-13](#).

(Solid Waste Management Division; [329 IAC 10-11-9](#))

SECTION 4. [329 IAC 11-9-4.1](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 11-9-4.1](#) Fees**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-16](#); [IC 13-19-3](#)

Affected: [IC 13-20](#); [IC 13-21-5](#); [IC 36-9-30](#)

Sec. 4.1. (a) For solid waste processing facilities, fees are as follows:

	New Permit or Major Modification	Fee
Processing Facility	Transfer Station	\$12,150
	Other	\$12,150
	Permit Renewal	
Processing Facility	Transfer Station	\$3,795
	Other	\$3,795

(b) For processing facilities, annual fees are as follows:

	Annual Operation Fees	Fee
Processing Facility	Transfer Station	\$3,500
	Other	\$3,500

(Solid Waste Management Division; [329 IAC 11-9-4.1](#))

SECTION 5. [329 IAC 15-3-4](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 15-3-4](#) Waste Tire Fees**

Authority: [IC 13-16](#); [IC 13-19-3-1](#); [IC 13-20-13-11](#)

Affected: [IC 13-20-21](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. The owner or operator of a waste tire storage site shall pay the Fees required by [IC 13-20-21](#) for waste tire storage, processing, and transportation are as follows:

<b>New Permit or Major Modification</b>	
	<b>Fee</b>
<b>Waste Tire Storage Registration</b>	<b>\$500</b>
<b>Waste Tire Processing</b>	<b>\$200</b>
<b>Waste Tire Transportation</b>	<b>\$25</b>
<b>Annual Fees</b>	
<b>Waste Tire Storage Registration</b>	<b>\$860</b>
<b>Waste Tire Transportation Registration</b>	<b>\$100</b>
<b>Permit Renewal</b>	
<b>Waste Tire Processing</b>	<b>\$200</b>

(Solid Waste Management Division; [329 IAC 15-3-4](#); filed Oct 10, 2000, 3:10 p.m.: 24 IR 321; 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](#))

SECTION 6. THE FOLLOWING ARE REPEALED: [329 IAC 15-3-7](#); [329 IAC 15-4-3](#).

[Notice of Public Hearing](#)

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An [html](#) version of this document.