
TITLE 326 AIR POLLUTION CONTROL DIVISION**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #22-109**MUNICIPAL SOLID WASTE LANDFILL EMISSIONS UPDATE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the repeal of rules at [326 IAC 8-8](#) and [326 IAC 8-8.1](#), and the addition of a new rule at [326 IAC 8-8.2](#), concerning federal updates to municipal solid waste landfill (MSWLF) rules with the incorporation by reference of 40 CFR 62, Subpart OOO. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 8-8](#); [326 IAC 8-8.1](#); [326 IAC 8-8.2](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

MSWLFs are discrete areas of land or excavation that receive household waste or other types of nonhazardous wastes such as commercial solid waste, nonhazardous sludge, and industrial nonhazardous solid waste. The original New Source Performance Standards (NSPS) (40 CFR 60, Subpart WWW) for MSWLFs and emission guidelines (40 CFR 60, Subpart Cc) for existing MSWLFs were promulgated by the United States Environmental Protection Agency (U.S. EPA) on March 12, 1996 (61 FR 9905), based on the determination that MSWLFs cause or significantly contribute to air pollution that is considered to endanger public health and welfare. Indiana adopted state rules implementing the federal 1996 emission guidelines at [326 IAC 8-8](#) and [326 IAC 8-8.1](#) and submitted them to U.S. EPA for state plan approval. U.S. EPA approved Indiana's state plan on March 20, 2000.

U.S. EPA subsequently reviewed the NSPS and emission guidelines in 2014, based on changes in the landfill industry since the rules were first adopted. These changes included changes to the size and number of existing landfills, industry practices, and gas control methods and technologies. This review led to several revisions in August 2016 with the addition of a MSWLF NSPS at 40 CFR 60, Subpart XXX (81 FR 59332), and the emission guidelines for existing MSWLFs at 40 CFR 60, Subpart Cf (81 FR 59276), which implemented changes to existing landfills that lower the emissions threshold at which an operator must install controls. States with existing MSWLFs subject to the new emission guidelines were required to submit state plans implementing the 2016 MSWLF emission guidelines by May 30, 2017. The NSPS requirements at 40 CFR 60, Subpart XXX are self-implementing and are not addressed in the federal requirements for state plans.

The May 30, 2017, deadline was subsequently extended to August 26, 2019, in a final rule that promulgated revised MSWLF state and federal plan timing requirements in a new Subpart Ba (84 FR 44547). However, this extension was challenged by the American Lung Association and subsequently vacated in the United States Court of Appeals for the D.C. Circuit, and the original date was restored. States that did not submit an approvable plan by the May 30, 2017, deadline would become subject to federal plan requirements. On February 29, 2020, U.S. EPA found that 42 states failed to submit state plans for the new federal requirements, and a final rule at 40

CFR 62, Subpart OOO was published on May 21, 2021, that established federal plan requirements for states that failed to submit a plan by the deadline (86 FR 27756). Indiana is one of the 42 states that did not submit a new state plan to U.S. EPA. On March 26, 2020, U.S. EPA also amended the emission guidelines at 40 CFR 60, Subpart Cf, to address administrative amendments and establish requirements consistent with the National Emission Standard for Hazardous Air Pollutants (NESHAP) that also applies to MSWLFs.

Consequently, MSWLFs in Indiana are subject to the federal plan at 40 CFR 62, Subpart OOO, and the state rules implementing the 1996 emission guidelines at [326 IAC 8-8](#) or [326 IAC 8-8.1](#). While it is U.S. EPA's intention that the 2021 federal plan replaces the existing 2016 approved state plan, the federal rules for the 2016 emission guidelines did not repeal 40 CFR 60, Subpart WWW that Indiana's state rules rely on, thus creating conflicting requirements for Indiana sources. IDEM intends to address this conflict with a Nonrule Policy Document in the interim, until this rulemaking is final and effective.

This rulemaking will repeal [326 IAC 8-8](#) and [326 IAC 8-8.1](#), and add a new rule at [326 IAC 8-8.2](#), to incorporate 40 CFR 62, Subpart OOO for MSWLFs into state rules, which will remove the conflicting requirements. The incorporation by reference also includes the updated federal language added on February 14, 2022 (87 FR 8203), to several sections of 40 CFR 62 to clarify compliance schedules, the closed subcategory, and the definition of "administrator". Once this rule is final, IDEM will submit a state plan to U.S. EPA for approval. Once approved by U.S. EPA, the federal plan will no longer be in effect in Indiana, which will remove the conflicting federal and state requirements.

It should also be noted that while [326 IAC 8-8.1](#) was put in place solely to address the requirements for a state plan under 40 CFR 60, Subpart Cc, the additional rule at [326 IAC 8-8](#) for landfills located in Lake, Porter, Clark, and Floyd counties was implemented to address volatile organic compound emission reductions for ozone nonattainment counties. The emission standards in the new rule at [326 IAC 8-8.2](#) will be applicable statewide and will be sufficient for Indiana to continue meeting ozone planning requirements. Indiana also intends to request a state implementation plan revision to replace [326 IAC 8-8](#) with the new rule at [326 IAC 8-8.2](#) once this rulemaking is final.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

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

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This rulemaking has no impact beyond that which is already imposed by federal law.

Public Participation and Work Group Information

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 Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Emily Totten
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 402-3062
etotten@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous

IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8921 or (800) 451-6027

emoorhou@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on the repeal of rules at [326 IAC 8-8](#) and [326 IAC 8-8.1](#), and the addition of a new rule at [326 IAC 8-8.2](#), concerning federal updates to MSWLF rules with the addition of 40 CFR 62, Subpart OOO. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by the Clean Air Act to adopt these requirements as state rule.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, as it ensures that the state MSWLF rules are consistent with federal regulations.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

Brian Rockensuess

Commissioner

Indiana Department of Environmental Management

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 #22-109 Municipal Solid Waste Landfills Update

Keelyn Walsh

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 kwalsh@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 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 or time stamped not later than May 6, 2022.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, at kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 8-8.2](#) IS ADDED TO READ AS FOLLOWS:

Rule 8.2. Federal Standards Applicable to Certain MSWLFs

[326 IAC 8-8.2-1](#) Adoption of federal standards applicable to certain MSWLFs

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-14](#)

Affected: [IC 13-12](#)

Sec. 1. (a) Except as provided in subsection (b), the owner or operator of an existing municipal solid waste landfill (MSWLF) that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with this rule and the July 1, 2021, version of 40 CFR 62, Subpart OOO (as amended by 87 FR 8203)*.

(b) The following authorities are not delegated to the state:

- (1) Approval of alternative methods to determine the nonmethane organic compounds concentration or a site-specific nonmethane generation rate constant k as provided in 40 CFR 62.16718(a)(5).
- (2) Alternative emission standards.
- (3) Major alternatives to test methods or monitoring that make modifications to a federally enforceable test method or to a federal monitoring requirement. These changes may involve the use of unproven technology or modified procedures or an entirely new method.
- (4) Waiver of record keeping.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 8-8.2-1](#))

SECTION 2. THE FOLLOWING ARE REPEALED: [326 IAC 8-8](#); [326 IAC 8-8.1](#).

[Notice of Public Hearing](#)

Posted: 04/06/2022 by Legislative Services Agency
An [html](#) version of this document.