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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

**Notice of First Public Comment Period**

LSA Document #24-322

**WASTE TIRE FINANCIAL ASSURANCE UPDATES**

**PURPOSE OF NOTICE**

Under [IC 4-22-2](#) and [IC 13-14-9](#), the Indiana Department of Environmental Management (IDEM) is soliciting public comment on amending and adding rules at [329 IAC 15](#) concerning recent statutory changes to waste tire management, including an updated definition of "used tire", and an additional financial assurance instrument, known as the corporate financial test, for waste tire storage sites. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**ADDITIONAL DOCUMENTS**

Regulatory Analysis: [20240911-IR-329240322RAA](#)

Notice of Public Hearing: [20240911-IR-329240322PHA](#)

**CITATIONS AFFECTED:** [329 IAC 15-2-13](#); [329 IAC 15-5-1](#); [329 IAC 15-5-8.5](#)

**AUTHORITY:** [IC 13-19-3-1](#); [IC 13-20-13-11](#); [IC 13-20-14-6](#)

**OVERVIEW**

**Basic Purpose and Background**

In this rulemaking, IDEM is proposing limited changes to [329 IAC 15](#) that will implement recent statutory changes to the waste tire management requirements. The specific changes include updating the definition of "used tire" at [329 IAC 15-2-13](#) to reflect the statutory definition of "used tire" at [IC 13-11-2-243.5](#), and adding a corporate financial test option to the financial assurance requirements in [329 IAC 15-5](#) to implement the statutory requirement at [IC 13-20-13-11](#)(b)(3). Under the statute, the corporate financial test for waste tire storage sites must be substantially similar to the corporate financial test set forth in 40 CFR 258.74(e). Because the requirements in 40 CFR 258.74(e) apply generally to solid waste disposal facilities rather than waste tire facilities, IDEM will modify the federal rule language to align with Indiana's administrative rules drafting standards applicable for waste tire storage sites. IDEM is not proposing additional amendments beyond the implementation of the statutory changes.

This rulemaking may impact registered waste tire storage sites and any applicants for a waste tire storage site registration. These entities are potentially impacted because they may be eligible to use the proposed corporate financial test. In addition, while the definition of "used tire" is being amended, any handlers of used tires are not affected because the statutory definition is already effective, and IDEM does not issue any type of permit or registration for used tire handlers.

**[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): None of the amendments to the waste tire management rules in [329 IAC 15](#) are imposed under federal law, including the specific amendments proposed in this rulemaking.

- (1) Federal laws or rules do not include specific standards for the management of waste tires or require individual states to implement a waste tire management program. However, because waste tires are solid waste, individual states may use their authority to develop specific laws and regulations for the management, storage, disposal, transport, and alternatives to disposal of waste tires. The Indiana general assembly

initiated a focus on management, proper disposal, and market development of waste tires in 1991 with the creation of the Waste Tire Task Force in response to the fire and disease vector hazards posed by large, unmanaged stockpiles of waste tires in Indiana. The Indiana General Assembly also enacted statutes at [IC 13-7-23](#) and [IC 13-7-23.2](#) (since recodified to [IC 13-20-13](#) and [IC 13-20-14](#)) for the management and disposal of waste tires. Subsequently, rule requirements for waste tire management were adopted at [329 IAC 15](#), which are proposed for amendment in this rulemaking.

For this rulemaking, the amendments are not imposed under federal law because they are related to specific state statutory requirements. The statutory definition of "used tire" is at [IC 13-11-2-243.5](#), and the directive to add a corporate financial test option is at [IC 13-20-13-11\(b\)\(3\)](#). While the state statute requires the corporate financial test to be substantially similar to federal regulations at 40 CFR 258.74(e), this requirement is expressly imposed by state statute rather than federal law. The federal rule simply serves as a framework for the state rule rather than a requirement that is imposed under federal law.

(2) The fiscal impact of the rule amendments not imposed under federal law is discussed in more detail in the Regulatory Analysis submitted with this notice. In general, the rule amendments will not have a fiscal impact because they provide an optional mechanism for waste tire storage sites to meet their financial assurance obligations. Affected entities will retain the flexibility to use the financial assurance mechanism most appropriate for their situation; they are not required to use the corporate financial test. For some entities, the corporate financial test may provide cost savings compared to other financial assurance mechanisms if the financial test has a lower cost for initial compliance and annual administration. Lastly, IDEM is not proposing additional amendments beyond the statutory requirements, so any fiscal impact is derived from the statutory requirements.

(3) IDEM relied on the following materials for the development of this NIFL element:

- (A) [329 IAC 15](#).
- (B) [IC 13-20-13](#) and [IC 13-20-14](#).
- (C) 40 CFR 258.74(e).
- (D) Indiana Waste Tire Task Force, Final Report, November 1992.
- (E) LSA Document #17-279.
- (F) The Regulatory Analysis for this rulemaking.

### 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](http://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:

Julie Rhodes  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-4477 or (800) 988-7901  
[ctap@idem.in.gov](mailto: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:

Matthew Jaworowski  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 650-0126  
[mjaworowski@iedc.in.gov](mailto:mjaworowski@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:

Drake Abramson  
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  
dabramso@idem.in.gov

### REQUEST FOR PUBLIC COMMENT

IDEM is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:  
LSA Document #24-322 Waste Tire Financial Assurance Updates  
Dan Watts  
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 email to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the email. **PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**
- (3) Attend scheduled public hearing.

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 or time stamped not later than October 11, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Rules Development Branch, Office of Legal Counsel, Indiana Department of Environmental Management, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the IDEM Rules Development Branch office.

If IDEM does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

### 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](#))

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 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 section 5 of this rule.
  - (B) A surety bond in accordance with section 6 of this rule.
  - (C) A letter of credit in accordance with section 7 of this rule.
  - (D) Insurance in accordance with section 8 of this rule.
  - (E) The corporate financial test in accordance with 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 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](#))*

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 its senior unsecured 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 considers 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 under 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 the owner's or operator's 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 its 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 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 through a financial test.**

*(Solid Waste Management Division; [329 IAC 15-5-8.5](#))*

*Posted: 09/11/2024 by Legislative Services Agency*

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