

Regulatory Analysis
LSA Document #24-322

I. Description of Rule

a. History and Background of the Rule – The genesis of this rulemaking by the Indiana Department of Environmental Management (IDEM) is recent changes to the waste tire management statutes in Indiana Code. IDEM is proposing to implement these statutory changes in the waste tire management rule requirements at [329 IAC 15](#). 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 the 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\(b\)\(3\)](#).

b. Scope of the Rule – The rulemaking is aligning the rule requirements with current statutory changes for waste tire management and providing additional regulatory flexibility for regulated entities. In accordance with [IC 13-20-13-11\(b\)\(3\)](#), 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 40 CFR 258.74(e) applies to solid waste disposal facilities, IDEM will modify the federal rule language to make it applicable for waste tire storage sites and compliant with Indiana's administrative rules drafting standards. Also, the addition of the corporate financial test option creates more regulatory flexibility for waste tire storage sites to fulfill their financial assurance obligations under [329 IAC 15-5](#).

c. Statement of Need – The rule is needed to make the waste tire management rules at [329 IAC 15](#) consistent with the recent statutory changes to waste tire requirements in Indiana Code. The specific statutory changes are described in the "History and Background of the Rule" section. These statutory changes were made in 2020, but the implementation of the associated rule changes were delayed by the completion of an ongoing waste tire rulemaking, agency rulemaking priorities, and the significant changes to the rulemaking process in 2023.

d. Statutory Authority for the Proposed Rule – The statutory authority for the rulemaking is found at [IC 13-19-3-1](#), [IC 13-20-13-11](#), and [IC 13-20-14-6](#). [IC 13-19-3-1](#) establishes general rulemaking authority to adopt rules to regulate solid and hazardous waste and implement the federal Resource Conservation and Recovery Act. [IC 13-20-13-11](#) and [IC 13-20-14-6](#) contain rulemaking authority to adopt rules for waste tire management, including specific authority for the corporate financial test option for waste tire storage sites.

e. Fees, Fines, and Civil Penalties – The rulemaking does not add or increase any fees, fines, or civil penalties.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – IDEM estimates that the rule will become effective in the first quarter of 2025. This estimated effective date may change if there is a delay in the publication of the notice of first comment period, substantive comments are received, or the agency determines, and timely notifies the publisher, it cannot adopt the rule within one year.

b. Estimated Fiscal Impact on State and Local Government – IDEM does not anticipate a fiscal impact on the expenditures and revenues of state agencies and local government. The rulemaking only implements limited statutory changes that do not increase expenditures or decrease revenues for government agencies. The only impacted entities are waste tire storage sites, which will gain an additional option to fulfill their financial assurance obligations.

c. Sources of Expenditures or Revenues Affected by the Rule – Not applicable.

III. Impacted Parties

This rulemaking may impact registered waste tire storage sites and any future applicants for a waste tire storage site registration. As of December 2023, there are nine (9) registered waste tire storage sites within Indiana. These entities are potentially impacted because they may be eligible to use the proposed corporate financial test for waste tire storage sites.

While the definition of "used tire" is being amended, handlers of used tires are not affected because the statutory definition is already effective. These entities were originally impacted when the statutory changes became effective. Additionally, IDEM does not issue permits or registrations for used tire handlers, as tires that meet the definition of "used tire" are not yet solid waste.

IV. Changes in Proposed Rule

Table 1: Proposed Rule Changes from Existing Regulation

Citation	Summary	Imposed by another source of law?	If so, where?
329 IAC 15-2-13	Changes to definition of "used tire"	Yes	IC 13-11-2-243.5
329 IAC 15-5-1(a)(5)(E)	Addition of the option for the corporate financial test for waste tire storage sites' financial assurance	Yes	IC 13-20-13-11(b)(3)
329 IAC 15-5-8.5	Detailed requirements for the corporate financial test	Yes	IC 13-20-13-11(b)(3)

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The main primary and direct benefits of the rulemaking include making the rules consistent with the statutory requirements for waste tire management and adding compliance flexibility for waste tire facilities that are required to maintain financial assurance. By completing this rulemaking, IDEM will implement the statutory directive at [IC 13-20-13-11\(b\)\(3\)](#) to establish rules for a corporate financial test for waste tire storage sites and update the definition of "used tire" to be consistent with [IC 13-11-2-243.5](#). These amendments will eliminate inconsistencies between the waste tire statutes and rules.

Adding the corporate financial test as a financial assurance option for waste tire storage sites will improve compliance flexibility for regulated entities. Waste tire storage sites that meet the conditions of the corporate financial test will have another option to determine the most appropriate and cost-effective financial assurance mechanism for their situation. While the corporate financial test may not be the best option for some entities, other entities may benefit from the option being available.

b. Estimate of Secondary or Indirect Benefits of the Rule – A secondary or indirect benefit of the rulemaking is the potential cost savings for regulated entities if the corporate financial test has a lower cost to maintain than their existing financial assurance mechanism. A regulated entity may have cost savings if they switch to the corporate financial test and it results in lower costs to establish and maintain financial assurance. This benefit is related to the primary benefit of providing additional compliance options for regulated entities.

c. Estimate of Any Cost Savings to Regulated Industries – Any potential cost savings are related to the secondary or indirect benefit described above. These cost savings are the result of new requirements that provide additional compliance options. Cost savings may result if the corporate financial test has a lower cost than the current financial assurance mechanism for a waste tire storage site. However, because the corporate financial test is an optional financial assurance mechanism and the cost of financial assurance varies between each entity and mechanism, IDEM is not able to estimate the exact amount of these potential cost savings.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – The rulemaking will not impose any compliance costs because the rulemaking is solely implementing statutory changes into the waste tire management rules and not imposing any additional rule requirements. Additionally, the corporate financial test as a financial assurance option for waste tire storage sites improves compliance flexibility for regulated entities rather than imposes any compliance costs. Regulated entities are not required to use this financial assurance mechanism and retain the flexibility to choose the mechanism that is most effective for them.

b. Estimate of Administrative Expenses Imposed by the Rules – The requirements to establish and maintain financial assurance for waste tire storage sites are a pre-existing requirement that are not amended in this rulemaking. Regulated entities that choose to maintain their current financial assurance mechanism

will not incur any administrative expenses.

If a regulated entity chooses to switch to the corporate financial test as their financial assurance mechanism, they may incur administrative costs to transition to the corporate financial test. However, these administrative costs are not imposed because using the corporate financial test is optional for waste tire storage sites. Additionally, the corporate financial test could result in overall cost savings for regulated entities, as discussed in the "V. Benefit Analysis" section of this regulatory impact analysis.

c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#) – The rulemaking does not propose to add or increase any fees, fines, or penalties. Therefore, the analysis required by [IC 4-22-2-19.6](#) is not included here.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in [IC 4-22-2-22.7\(c\)\(6\)](#) – The rulemaking will not have implementation costs that exceed the \$1,000,000 set in [IC 4-22-2-22.7\(c\)\(6\)](#) because the proposed rule only includes statutory requirements and optional compliance alternatives for regulated entities. The rule does not include mandatory requirements that will impose implementation costs.

VII. Sources of Information

a. Independent Verifications or Studies - IDEM did not need to rely upon any independent verifications or studies to reach the conclusions in this cost-benefit analysis. First of all, IDEM already has the information available through information reported to the department to complete this cost-benefit analysis. Secondly, the subject matter of this rulemaking is very limited, and independent verifications or studies are not widely available for waste tire financial assurance or the use of a corporate financial test for waste tire facilities.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – IDEM did not rely upon any outside sources to determine the costs and benefits for this rulemaking for the reasons discussed in the "a. Independent Verifications or Studies" section. IDEM had the information available in current rules and statutes and information from registered waste tire facilities.

VIII. Regulatory Analysis

The benefits of the rulemaking are likely to exceed the costs because the rulemaking does not impose any compliance costs or administrative expenses while it does create potential cost saving opportunities for regulated entities. In addition, as shown in Table 1, the changes are solely derived from state statutory requirements rather than any agency-initiated rule requirements. As a result, the agency will not be imposing any changes that will have a cost or benefit. Table 2 summarizes the potential net cost/benefit of the rulemaking.

Table 2: Aggregate Tally of Costs and Benefits

Citation	Cost?	Benefit?	Net Cost/Benefit
329 IAC 15-2-13	None	None	None
329 IAC 15-5-1(a)(5)(E)	None	None	None
329 IAC 15-5-8.5	Discretionary administrative expenses to meet the conditions of the financial test	Potential cost savings from reduced cost of financial assurance mechanism	Undetermined potential net benefit due to optional status of the change
Total	n/a	n/a	Undetermined potential net benefit

IX. Contact Information of Staff to Answer Substantive Questions

Daniel Watts
 317-234-5345
dwatts1@idem.in.gov
 Rule Writer/Senior Environmental Manager
 Indiana Department of Environmental Management

Notice of First Public Comment Period with Proposed Rule: [20240911-IR-329240322FNA](#)

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