

Document: IC 13-14-9 Notice

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TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD #00-173(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE INDIANA SCORING MODEL AND ASSESSMENT OF HAZARDOUS SUBSTANCE RESPONSE SITES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 329 IAC 7 concerning the Indiana Scoring Model and the assessment of hazardous substance response sites. This rule will reconsider the maximum score to allow sites to be deleted from the Commissioner's Bulletin. This rule will also consider appropriate criteria or designation for the deletion of sites from the Commissioner's Bulletin as an alternative to using the maximum score for deleting a site. IDEM seeks comments on the affected citations listed and any other provision of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: September 1, 2000, Indiana Register (23 IR 3220).

CITATIONS AFFECTED: 329 IAC 7.

AUTHORITY: SEA 360-1997; IC 13-14-2-2; IC 13-14-8; IC 13-25-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Senate Enrolled Act 360-1997 required rules be adopted by the solid waste management board to amend 329 IAC 7 concerning the Indiana Scoring Model and assessment of hazardous substance response sites and determine a maximum score to allow sites that either have been the subject of a successful remediation or score at or below the maximum score to be removed from the priority ranking if appropriate.

A procedure for deleting a listed site from the priority ranking and a maximum score was established by a rule LSA #98-110(F), effective November 27, 1998. A maximum score of 5 was established. The procedures allowed for either a site to petition for deletion or for the agency to initiate deletion of a site.

After consideration of all sites on the list, it was determined by the agency that this maximum score is inadequate to appropriately delete all the sites that have been the subject of a successful remediation. There are sites that pose no risk to human health or the environment but still accrue a score greater than 5.

The department would like to again examine the maximum score for a site to be removed from the priority ranking and, in addition, the department would also like to consider criteria or other approvals (designations) to be applied to a remediated site to determine appropriateness for that site to be deleted from the list.

IDEM is requesting comments on the draft language and any other provisions that may be affected by this rulemaking. IDEM will consider other options and additions to the above procedures as necessary to implement the statute and would welcome rule change suggestions.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2000, through October 2, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Marcia Oddi (MJO)

Mark Shere, Bethlehem Steel Corporation (MS)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: 329 IAC 7 contains various charts and tables. All of these charts and tables formed a part of the original rule document, promulgated by SWMB more than ten (10) years ago. Unfortunately, many of these charts and tables were illegible in the original final rule document as published in the Indiana Register and have remained so to this day, making it difficult for the public and

regulated community to understand and apply the rule. This rulemaking presents an opportunity to correct the situation. Although the publisher of the Indiana Administrative Code (IAC) has attempted to convert and reproduce in type those charts and tables which were at least partially legible in the original rule document, these changes have not been made by any formal legal procedure. And other completely illegible tables and charts have simply been scanned and inserted into 329 IAC 7 as is.

Recommendation: If the tables and charts in 329 IAC 7 are to be continued, every one of them should be checked by IDEM against the original rule document that begins at 13 IR 9 for legibility and, where a chart or table has been converted from graphic to text format by the publisher of the IAC, accuracy. Corrections should be made as necessary. In addition, illegible charts and tables should be replaced with legible copy, preferable in electronic format, prior to re-adoption of all these charts and tables as part of the changes to 329 IAC 7 by #00-173. Alternatively, if these charts and tables are based upon a present or prior federal regulation, perhaps the relevant documents could be incorporated by reference, eliminating the need for them in 329 IAC 7. (MJO)

Response: As per your recommendation, the department will review the charts and tables in 329 IAC 7 for accuracy with the original final rule. The legibility of the rule in the version published in the Indiana Register is not a rule drafting issue. This matter should be addressed to the editor of the Indiana Register. Although the department prefers to incorporate federal rules, 329 IAC 7 is not based on prior or current federal rules that can be incorporated by reference.

Comment: As IDEM revises its rules, the agency should provide that the completion of RCRA corrective action is sufficient to remove a facility from the list of priority facilities under the scoring model. A simple revision to incorporate this change follow:

329 IAC 7-2-6 Assessment of hazardous substance response sites; scoring of five or less

Sec. 6 A Sites that receive a score of five (5) or less may be deleted from the commissioner's bulletin through an agency or petition deletion procedure if it:

(a) receives a score of five (5) or less; or

(b) has been identified by the Department or by U.S. EPA as requiring no further action for releases of hazardous wastes or hazardous constituents following investigation and /or remediation performed under the Resource Conservation and Recovery Act (RCRA). (MS)

Response: The concept is valid and has been expanded in the rule to include other clean-up programs such as the voluntary remediation program, the state clean-up program, the leaking underground storage tank clean-up program, and the superfund clean-up program.

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. Mailed comments should be addressed to:

#00-173(SWMB) [Changes to Indiana Scoring Model Rule]

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-7995 or (317) 232-3593.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by February 1, 2001.

Additional information regarding this action may be obtained from Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 7-2-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-2-6 Assessment of hazardous substance response sites

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7

Affected: IC 13-22-2

Sec. 6. Sites that receive a score of five (5) or less A site may be deleted from the commissioner's bulletin through an agency or petition deletion procedure **if the site complies with one (1) of the following:**

(1) Received a score of ten (10) or less.

(2) A comprehensive site clean-up has been completed so that the site is no longer a significant threat to human health and the environment and one (1) of the following has been issued concerning the site:

(A) A letter from the department's leaking underground storage tank section that states no further action is necessary.

(B) A letter of determination from the department or the United States Environmental Protection Agency that states no further action is necessary for releases of hazardous wastes or hazardous constituents following investigation and remediation performed under the Resource Conservation and Recovery Act.

(C) A certificate of completion and a covenant not to sue from the department's voluntary remediation program section.

(D) A record of decision or declaration of closure from the department's state clean-up program section that states no further action is necessary.

(E) Designation in the United States Environmental Protection Agency's Comprehensive Environmental Response Compensation Liability Act data base of "No Further Remedial Action Planned Priority Assessment".

(Solid Waste Management Board; 329 IAC 7-2-6; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753)

SECTION 2. 329 IAC 7-11-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-1 Deletion procedure agency deletion

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7

Affected: IC 13-22-2

Sec. 1. Procedures for deleting sites from the commissioner's bulletin by agency deletion are as follows:

(1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ~~five (5)~~ **ten (10)** or less **or be eligible for deletion under 329 IAC 7-2-6(2).**

(2) The commissioner shall notice the local or county health or environmental agency of the proposed agency deletion. The notice shall include the following:

(A) Name.

(B) Location.

(C) Property legal description.

(D) Current owners or operators.

(E) Property ownership.

(F) Operation history.

(G) A comprehensive summary that includes:

(i) the current site conditions; and

(ii) an explanation that these current site conditions do not pose a significant environmental concern.

(3) The commissioner shall solicit a correspondence regarding the proposed agency deletion from the:

(A) local officials;

(B) county health department; or

(C) environmental agency.

(4) The commissioner shall provide the following as necessary:

(A) Answers to any public comments received.

(B) A forum for public meetings.

(5) The commissioner will consider comments received from the:

(A) public;

(B) county commissioners;

(C) town board; or

(D) mayor's office.

(6) Forty-five (45) days after initiation of agency deletion procedures, the commissioner will notify interested parties, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-1; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753)

SECTION 3. 329 IAC 7-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-2 Deletion procedures; petition deletion

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7

Affected: IC 13-22-2

Sec. 2. Procedures for deleting sites from the commissioner's bulletin by petition deletions are as follows:

(1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ~~five (5)~~ **ten (10)** or less **or be eligible for deletion under 329 IAC 7-2-6(2)**.

(2) The commissioner must receive a petition for deleting a site from the commissioner's bulletin. The petition correspondence must include the following:

(A) Name.

(B) Location.

(C) Property legal description.

(D) Current owners or operators.

(E) Property ownership.

(F) Operational history records relating to the hazardous waste activities.

(G) A comprehensive summary that includes:

(i) the current site conditions; and

(ii) an explanation that these current site conditions do not pose a significant environmental concern.

(H) Correspondence from the:

(i) local officials;

(ii) county health department; or

(iii) environmental agency;

delineating their position on the proposed deletion.

(3) The commissioner shall provide the following as necessary with petitioner's participation:

(A) Public hearings.

(B) Public meetings.

(C) Information necessary to answer public comments.

(4) The commissioner will consider comments received from the:

(A) public;

(B) county commissioners;

(C) town board; or

(D) mayor's office.

(5) The commissioner will notify all interested parties, within forty-five (45) days after complete and adequate petition correspondence is received by the commissioner, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-2; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753)

SECTION 4. 329 IAC 7-11-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-3 Deletion procedures; site relisted

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7

Affected: IC 13-22-2

Sec. 3. Sites may be deleted from the commissioner's bulletin if the site scores a score of ~~five (5)~~ **ten (10)** or less **or is eligible for deletion under 329 IAC 7-2-6(2)**. Sites that are deleted, which subsequently receive a score higher than ~~five (5)~~, **with ten (10), may be relisted on the commissioner's bulletin if new information becomes available to indicate that site conditions have changed and the site warrants reevaluation.** *(Solid Waste Management Board; 329 IAC 7-11-3; filed Oct 28, 1998, 3:26 p.m.: 22 IR 754)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 17, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on new rules and amendments to rules at 329 IAC 7, concerning changes to the Indiana Scoring Model rule.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the readoption of these rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures

to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: Susan Zapf, ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 234-1208 (V) or (317) 233-6565 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana and are open for public inspection.