

Document: Proposed Rule

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**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

Proposed Rule
LSA Document #00-173

DIGEST

Amends 329 IAC 7-2-6, 329 IAC 7-11-1, 329 IAC 7-11-2, 329 IAC 7-11-3 with a new maximum score of 10 to be eligible for deletion from the Commissioner's Bulletin and adds designations that can be attained for consideration for deletion. 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 LSA #98-110(F), which was 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. 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. Effective 30 days after filing with the secretary of state.

HISTORY

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

Second Notice of Comment Period and Notice of First Hearing: January 1, 2001, Indiana Register (24 IR 1179).

Date of First Hearing: April 17, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantively different from the draft rule published on January 1, 2001, at 24 IR 1179, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2001, through February 1, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Mark Shere, Bethlehem Steel Corporation (MS)

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

Comment: First, I am writing on behalf of Bethlehem Steel to express the company's support for IDEM's proposed rule regarding revisions to its scoring model for hazardous waste sites, which appears under the title "Development of Amendments to Rules Concerning the Indiana Scoring Model and Assessment of Hazardous Substance Response Sites." 24 IND. 1179 (January 1, 2001) (MS)

Response: Thank you for your support. IDEM believes that this rule will clarify which facilities can be deleted from the commissioner's bulletin and allow sites that don't require further remediation to be deleted.

Comment: Second, I want to thank the agency for its favorable response to my prior comment letter (September 29, 2000) on this proposed rule. That letter recommended that facilities should be removed from the state's priority list following clean up under RCRA corrective action. The agency incorporated this point, and expanded it in a clear manner to encompass other types of clean up work as well. (MS)

Response: IDEM believes that the addition of the language does complement the approach we are taking to delete facilities from the commissioner's bulletin.

Comment: Third, I would like to suggest some additional language for IDEM's consideration, which may make the new provisions regarding clean ups more practical and effective. As currently proposed, the rule provides that a site may be deleted from the priority list upon a determination that "no further action is necessary" under RCRA corrective action. For many facilities that pose no priority in terms of environmental risk, U.S. EPA is unlikely to issue "no further action" decisions for many years. Instead, the EPA and IDEM have established a formal process for determining compliance with two key "Environmental Indicators": (1) Current Human Exposures under Control and (2) Migration of Contaminated Groundwater under Control. A site that meets these Environmental Indicators may still require additional remediation or monitoring to provide full protection against potential long-term exposures. At the same time, it is clear that such a site is no longer a hazardous waste "priority." For these reasons, IDEM's proposed rule on scoring model revisions will be more effective if it incorporates language to remove sites from the state priority list based on compliance with the Environmental Indicators. Possible language to make this change follows:

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

Sec. 6. 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:...

(2)(B) A letter of determination from the department or the United States Environmental Protection Agency, following investigation and remediation performed under the Resource Conservation and Recovery Act, states that (i) 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, or (ii) current human exposures and migration of contamination groundwater at the site are both under control. (MS)

Response: IDEM's approach to site status or priority designations differs considerably from that proposed in the comment. IDEM utilizes environmental indicators to measure progress toward achieving a goal or endpoint, in this case, eventual site remediation or temporal disposition. IDEM does believe that careful characterization whether completed expeditiously or after "many years" is prudent, but does not believe the use of indicators as endpoints is acceptable. No change was made.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 17, 2001, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 7.

No comments were made at the first hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

IDEM has estimated that the economic impact of this rule will be less than five hundred thousand dollars (\$500,000) on the regulated entities. The proposed rule was not submitted to the Legislative Services Agency for analysis under IC 4-22-2-28.

329 IAC 7-2-6

329 IAC 7-11-2

329 IAC 7-11-1

329 IAC 7-11-3

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; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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)~~ **will 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; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 21, 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 proposed amendments to 329 IAC 7.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. 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, Outreach and Planning section, Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana, (317) 232-3593 or (800) 451-6027 (in Indiana).

If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

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

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 233-6087 (TT). Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at (800) 743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality