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## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

### **FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND DRAFT RULE #04-256(SWMB)**

#### **DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 10 CONCERNING A MINOR MODIFICATION TO A MUNICIPAL SOLID WASTE LANDFILL PERMIT FOR RESEARCH, DEVELOPMENT, AND DEMONSTRATION**

##### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to the rule at 329 IAC 10 regarding a minor permit modification for research, development, and demonstration at municipal solid waste landfills. The purpose of this notice is to seek public comment on the draft rule. This rule will incorporate federal language into the Indiana rules. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 329 IAC 10-2-112; 329 IAC 10-11-6.5.

**AUTHORITY:** IC 4-22-2; IC 13-14-9; IC 13-14-8-1; IC 13-14-8-2; IC 13-15-2; IC 13-19-3-1.

##### **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 notice of first public comment period would provide no substantial benefit, 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**

The United States Environmental Protection Agency (EPA) revised the criteria for municipal waste landfills (MSWLFs) to allow states to modify the landfill's permit for research, development, and demonstrations (RD&D) at new and existing MSWLFs. The federal rule allows states with approved 40 CFR 258 programs to provide a permit modification from certain requirements now in the rules. These minor permit modifications will be allowed if the owner/operator of the MSWLF can demonstrate that compliance with the RD&D minor modification to the permit will not increase risk to human health and the environment over compliance with a standard MSWLF permit. EPA chose to provide this alternative permit authority to promote innovative technologies associated with landfilling of municipal solid waste. RD&D minor permit modifications would allow some latitude for new ideas regarding run-on control systems, liquids restrictions, and final cover requirements. No other alternatives in the MSWLF rules, unless already provided for in the existing rules, are allowed. The federal language is being incorporated into the MSWLF rules at 329 IAC 10.

##### **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking regarding a minor permit modification for research, development, and demonstration at municipal solid waste landfills. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) I have determined that in order for owner/operators to avail themselves of the allowance for a minor permit modification for research, development, and demonstrations, the federal rule must be incorporated into the Indiana rules at 329 IAC 10.
- (2) I have determined that the federal rules are extremely narrow in scope. Permits may be modified regarding run-on control systems, liquids restrictions, and final cover requirements.
- (3) 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.
- (4) The draft rule is hereby incorporated into these findings.

Lori Kaplan  
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 contained in the rule. Mailed comments should be addressed to:

#04-256 (SWMB) (RD&D 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, Eleventh Floor West, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, 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.

### COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 1, 2004. 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 10-2-112, AS AMENDED AT 27 IR 1795, SECTION 23, IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 10-2-112 “Minor modification of solid waste land disposal facilities” defined**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 112. (a) “Minor modification of solid waste land disposal facilities” means any modification in a permitted solid waste land disposal facility that would not:

- (1) increase the:
  - (A) facility’s permitted capacity to dispose of solid waste by the lesser of:
    - ~~(A)~~ (i) more than ten percent (10%); or
    - ~~(B)~~ (ii) five hundred thousand (500,000) cubic yards; **or**
  - ~~(2)~~ increase the (B) area within the permitted solid waste boundary by more than one (1) acre; **or**
  - ~~(3)~~ (2) include those items determined to be:
    - (A) insignificant modifications by 329 IAC 10-3-3(b) or by the commissioner; or
    - ~~(4)~~ include those items determined to be (B) major modifications by section 109 of this rule.

(b) A minor modification may include the addition or modification of: **includes, but is not limited to, the following:**

- (1) An alternative daily cover (ADC) under 329 IAC 10-20-14.1(e).

(2) A baled waste management plan under 329 IAC 10-20-31(3). ~~and~~

(3) A borrow pit:

(A) owned by the owner, operator, or permittee;

(B) not permitted by the department before April 1, 2004; and

(C) located on-site or on property adjoining the facility.

**(4) The run-on control systems, the liquids restriction, and the final cover as allowed under the research, development, and demonstration minor permit modification in 329 IAC 10-11-6.5.**

*(Solid Waste Management Board; 329 IAC 10-2-112; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)*

SECTION 2. 329 IAC 10-11-6.5 IS ADDED TO READ AS FOLLOWS:

**329 IAC 10-11-6.5 Research, development, and demonstration minor modification application**

**Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1**

**Affected: IC 13-30-2; IC 36-9-30**

Sec. 6.5. (a) Except as provided in subsection (f), the commissioner may issue a minor modification for research, development, and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from either or both of the following criteria provided that the MSWLF has a leachate collection system designed and constructed to maintain less than a thirty (30) centimeters depth of leachate on the liner:

(1) The run-off control system in 329 IAC 10-20-11(a)(1).

(2) The liquids restrictions in 329 IAC 10-20-27.

(b) The commissioner may issue a minor modification for research, development, and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from the final cover requirements at 329 IAC 10-22-6, provided the MSWLF owner/operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water or cause leachate depth on the liner to exceed thirty (30) centimeters.

(c) Any minor modification to the permit issued under this section must include such terms and conditions at least as protective as this article to assure protection of human health and the environment. Such minor modification shall do the following:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three (3) years, unless renewed as provided in subsection (e).

(2) Provide that the MSWLF must receive only those types and quantities of municipal solid waste and nonhazardous wastes that the commissioner deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process.

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the commissioner with respect to the operation of the facility.

(4) Require the owner or operator of the MSWLF with a minor modification under this section to submit an annual report to the commissioner showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the commissioner in the minor modification given under this section.

(5) Require compliance with all requirements, as applicable, under this article.

(d) The commissioner may revoke or amend the minor modification issued under this section and require immediate termination of all operations at the facility allowed by the minor modification issued under this section or other corrective measures at any time the commissioner determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(e) Any minor modification issued under this section shall not exceed three (3) years, and each renewal of a permit may not exceed three (3) years. The following apply to this section:

(1) The total term for a minor modification issued under this section, including renewal, must not exceed twelve (12) years.

**(2) During the minor modification renewal, the owner or operator shall provide the following:**

**(A) A detailed assessment of the project showing the status with respect to achieving project goals.**

**(B) A list of problems and status with respect to problem resolutions.**

**(C) Any other requirements that the commissioner determines necessary for the minor modification renewal.**

**(f) An owner or operator of a MSWLF:**

**(1) operating under an exemption set forth in 40 CFR 258.1(f)(1); or**

**(2) that disposes of twenty (20) tons of municipal solid waste per day or less based on an annual average; is not eligible for a minor modification under this section. (Solid Waste Management Board; 329 IAC 10-11-6.5)**

### ***Notice of First Public Hearing/Meeting***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on November 16, 2004, 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 (board) will hold a public hearing on the proposed amendments to 329 IAC 10.*

*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 proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593, (800) 451-6027 (in Indiana) or e-mail at [lwest@dem.state.in.us](mailto:lwest@dem.state.in.us).*

*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, IN 46206-6015*

*or call (317) 233-0855, (317) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-333. Please provide a minimum of seventy-two (72) hours' notification before the hearing.*

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