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**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

**CONTINUATION OF FIRST NOTICE OF
COMMENT PERIOD**

LSA Document #05-234(SWMB)

**DEVELOPMENT OF NEW RULES CONCERNING THE ENVIRONMENTAL STEWARDSHIP PROGRAM AND
COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules to 329 IAC concerning instituting state voluntary performance-based programs similar to the United States Environmental Protection Agency's (U.S. EPA) National Environmental Performance Track Program (Performance Track) to provide opportunities and incentives for eligible entities to allocate resources towards continuous improvement of their environmental management systems and pollution prevention programs. The First Notice of Comment Period, published on September 1, 2005 (28 IR 3691), asked for comments on possible incentives for the program, on elements of U.S. EPA's program and programs in other states that may be appropriate for Indiana, and on any other issues related to development and implementation of a performance-based incentive program for Indiana companies. This state program will be called the Environmental Stewardship Program (ESP). Since the publication of the First Notice of Comment Period, IDEM has identified another state program in the development stage, Comprehensive Local Environmental Action Network (CLEAN), that could be included in this rulemaking. This Continuation of First Notice provides information about the CLEAN program and requests comments on inclusion of CLEAN in this rulemaking.

HISTORY

First Notice of Comment Period: September 1, 2005, Indiana Register (28 IR 3691). Comment period ended October 3, 2005.

CITATIONS AFFECTED: 329 IAC 18.

AUTHORITY: IC 13-14-8; IC 13-19-3-1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IDEM is considering implementing a performance-based incentive program, ESP, for companies that not only meet environmental regulatory requirements but that voluntarily go beyond those requirements to provide even greater protection to the environment and public health. To reward and encourage these companies, U.S. EPA and several states have implemented innovative programs that provide flexibility to eligible companies in meeting certain existing requirements. The goal of ESP is to achieve better environmental results by focusing more on outcomes than traditional measures. By providing regulatory flexibility, opportunities are provided to go beyond the compliance measures established by regulations. Opportunities are also created for state and federal government, as well as the regulated community, to focus resources more strategically to produce better overall environmental results.

The federal Performance Track program is a voluntary, performance-based program that provides incentives to companies that have gone above and beyond standard regulatory requirements. Incentives may include: recognition, networking opportunities, low priority for routine inspections, permitting flexibility, and decreased record keeping, reporting, and monitoring frequencies. These incentives include policy, guidance, and regulatory approaches. In some cases, other actions also must be completed before an organization may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek U.S. EPA approval of a revised program, re-issue permits, or take other actions.

Significant improvements in environmental quality are being achieved at the state and federal level as a result of performance-based programs. These programs provide opportunities and incentives for organizations to allocate resources towards continuous

improvement of their environmental management systems and pollution prevention programs. Through these focused efforts, U.S. EPA and state agencies are reporting increased compliance levels and reductions in material usage, energy consumption, and emission levels by program members.

In the First Notice of Comment Period, IDEM proposed the development of a voluntary, performance-based program designed to recognize and provide greater flexibility to Indiana companies for exemplary environmental performance and stewardship. IDEM is also currently in the initial implementation phase of a voluntary program for municipalities called CLEAN. The CLEAN Community Challenge is a voluntary recognition program that helps local government take steps to plan, develop, and implement a quality of life plan. The quality of life plan addresses continuous environmental improvement and management of the community's environmental issues above and beyond regulatory compliance. The quality of life plan consists of four components: 1) mission statement, 2) environmental activities and goals, 3) implementation and operation procedures, and 4) monitoring and reviewing the plan's progress. The CLEAN Community Challenge is proposed to be structured similarly to the ESP and has equivalent eligibility criteria.

With this Continuation of First Notice, IDEM seeks comment on inclusion of the CLEAN program in this rulemaking and any elements of U.S. EPA's program and programs in other states that may be appropriate for the CLEAN program in Indiana.

Alternatives To Be Considered Within the Rulemaking

The First Notice of Comment Period, published on September 1, 2005 (28 IR 3691), included three (3) alternatives for which comments were received. This continuation of first notice adds this additional alternative to be considered.

Alternative 4. Include the CLEAN program in the new rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law, but it provides a regulatory framework to implement a voluntary state program similar to the National Environmental Performance Track Program.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

This rule is for two voluntary, performance-based programs similar to the U.S. EPA's National Environmental Performance Track Program, a voluntary program that recognizes excellent environmental performance with opportunities and incentives. Specific environmental laws may become applicable if future federal rules for the National Environmental Performance Track Program are adopted at the state level.

Potential Fiscal Impact

There would be no fiscal impact imposed under any of the identified alternatives because the program is voluntary. However, organizations taking advantage of the program could see reduced costs from some of the potential incentives such as reduced record keeping, reporting, and monitoring frequency.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program 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 the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue, IGCN 1301
Indianapolis, IN 46204-2251

(317) 234-3386
elevenha@idem.in.gov

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-234(SWMB) ESP and CLEAN
Christine Pedersen Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342 or (317) 233-5967, 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 Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 1, 2006.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Bruce H. Palin
Assistant Commissioner
Office of Land Quality