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TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND 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) has developed draft rule language for a new article at 329 IAC 18 concerning two voluntary performance based leadership programs. The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) are new Indiana programs that offer recognition and incentives for companies and units of local government that consistently demonstrate environmental stewardship and strive for continual environmental improvement initiatives in Indiana's environmental programs. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

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

Continuation of First Notice: April 1, 2006, Indiana Register (29 IR 2378).

CITATIONS AFFECTED: 329 IAC 18.

AUTHORITY: IC 13-14-8; IC 13-19-3; Public Law 100-2006.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rule is the creation of two voluntary environmental performance based leadership programs to promote continuous environmental improvement in Indiana. IDEM is proposing the development of two programs, the Environmental Stewardship Program (ESP) for businesses, and the Comprehensive Local Environmental Action Network (CLEAN) for units of local government. Similar to the United States Environmental Protection Agency's National Environmental Performance Track Program (NEPT), these state programs are designed to achieve environmental results by recognizing innovation, motivating organizations to work toward environmental improvements, and complementing existing regulatory activities. These programs focus on environmental outcomes such as reduced emissions, reduced waste, and lower discharges. Performance based leadership programs combine elements such as environmental management systems, a history of regulatory compliance, and continuous environmental improvement projects to create a solid program that yields environmental benefits.

An environmental management system (EMS) is a system for identifying, controlling, and monitoring activities that impact the environment. The system integrates environmental responsibilities into everyday business decision making leading to a proactive approach to environmental management rather than a reactive one. All employees associated with those processes or responsibilities that could have environmental implications are informed of the environmental aspects of the organization, potential environmental impacts of those aspects, and their responsibilities to ensure compliance and environmental protection. An effective EMS helps an organization to avoid, reduce, or control the adverse environmental impacts of its activities, products, and services, achieve compliance with applicable legal requirements, and assist in continually improving environmental performance. Organizations with an effective EMS also realize increases in operational efficiency and decreased costs, making them a better, cleaner, more stable employer. Since an EMS is site-specific, implementation of an EMS is practical and useful for organizations of all types and sizes.

Members of performance based leadership programs must be in compliance with regulatory requirements and must be able to demonstrate a history of compliance. Before an organization can work towards going beyond compliance improvements, mechanisms must be in place to consistently take corrective and preventive actions and maintain compliance.

Continuous environmental improvement initiatives are projects the entity commits to implement that provide an environmental benefit that would not be achieved by compliance with applicable requirements alone. Sample "commitments" by members of the

NEPT that could be part of a state program include increasing the amount of material recycled, reducing toxic inputs into a process, working with suppliers on environmental projects at the suppliers' locations, reducing air emissions, reducing water discharges, reducing water usage, reducing energy usage, reducing the quantity of hazardous waste generated, and working with their local communities to identify and implement environmentally beneficial projects.

Staff time is a limited resource for both IDEM and regulated entities. In order to allow high performers to focus their resources on environmental improvements, these innovative programs offer operational flexibility. This allows more strategically targeted resource allocations by members of the programs and IDEM to produce better overall environmental results. For example, one state performance based program worked with a member to reduce water effluent monitoring frequency, where a documented history of compliance existed, saving the member time and money. These resources were shifted towards efforts to reduce environmental impacts identified in the member's EMS and environmental improvement projects. Some of the improvements made by the member included elimination of a toxic chemical from the manufacturing process, reduced water usage, energy usage and solid waste generation, and reduced BOD in wastewater effluent.

National Environmental Performance Track Program

NEPT is a federal voluntary partnership program that recognizes and rewards companies that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. NEPT is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation. U.S. EPA provides exclusive regulatory and administrative benefits to NEPT members, including placing them at low priority for routine inspections, and offers public recognition, networking opportunities, and other benefits. To qualify for NEPT, applicants must have adopted and implemented an EMS, show evidence of specific past environmental achievements, have a history of sustained compliance with environmental requirements, commit to continued environmental improvement, and commit to public outreach and performance reporting.

Environmental Stewardship Program and Comprehensive Local Environmental Action Network

ESP and CLEAN are voluntary programs that recognize and reward entities that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. Both IDEM and the member organization commit to new ways of achieving environmental goals through this program. For Indiana organizations that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement, ESP offers recognition, regulatory flexibility, and an opportunity to work directly with IDEM on innovative pilot projects. IDEM sees this program as a mechanism to reward organizations that are currently taking a proactive approach to environmental management as well as a way to motivate more Indiana organizations to take the next step and take a proactive approach to environmental management.

CLEAN helps local government take steps to plan, develop, and implement a quality of life plan, similar to an EMS. The quality of life plan addresses continuous environmental improvement and management of the community's environmental issues above and beyond the baseline of 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 structured similarly to the ESP and has eligibility criteria at least as stringent as the ESP. IDEM is adding the CLEAN program to this rulemaking so that the programs can operate in tandem.

To qualify for ESP and CLEAN, applicants must demonstrate that they have:

- (1) implemented an environmental management system (EMS) that meets the requirements of this rule;
- (2) evidence of sustained compliance with environmental requirements and a commitment to maintain the level of compliance necessary to qualify for the program; and
- (3) a commitment to continued environmental improvement through environmental improvement initiatives over the term of the membership.

The ESP and CLEAN programs require members to submit an annual summary reporting on their progress toward their environmental improvement initiatives and verifying their EMS has gone through review and still maintains the standard necessary for participation. This annual summary will provide IDEM with measurable results attained through the member's initiatives.

Differences Between the Federal and State Programs

Though IDEM has worked towards and continues to strive for consistency with the federal program, the ESP and CLEAN programs have some differences from the NEPT program on some program elements. IDEM desires to develop a program that encourages organizations to take that next step in the evolution of their environmental management responsibilities from compliance driven to beyond compliance and continuous environmental improvement. IDEM has reviewed and incorporated many elements from other state performance based programs and has also considered the nature of Indiana's natural and regulatory environment, yielding a program unique to Indiana. Some of the differences between the proposed state programs and the federal NEPT program are

described below:

- Past Environmental Achievements: The NEPT program requires applicants to report results from two past environmental achievements. IDEM has elected not to require applicants to report on past achievements. IDEM's programs are forward looking programs and designed to provide that mechanism for applicants to decide to take that next proactive step to continuous improvement and are open to applicants just beginning this progressive approach to environmental management. IDEM feels that encouraging entities to become program members while they are in the early stages of developing a proactive environmental management system will provide support for further improvements and can provide the impetus for senior management to see the value in progressive environmental management. IDEM also hopes that the Indiana programs will motivate entities to work to achieve higher levels of environmental management.
- Future Environmental Achievements: NEPT applicants must identify four environmental performance commitments in their initial and renewal applications. ESP applicants must identify one environmental improvement initiative in their initial application and one environmental improvement initiative in each annual summary as long as the member continues to maintain membership in the program. CLEAN applicants must identify five environmental improvement initiatives for the three-year membership. IDEM chose to have ESP applicants identify initiatives on an annual basis in order to better coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets. IDEM understands that many initiatives may take longer than one year to be attained and the implementation time frames for each initiative will vary. IDEM is electing to require three initiatives for ESP rather than four in order to enable the member to focus more resources on attaining the initiatives and producing measurable results. IDEM feels that requiring three initiatives will lead to better progress towards the goals of the initiatives and increased resource allocation by the member toward each initiative.
- Environmental Management System: The EMS requirements in the federal and state programs are very similar because they are based on the ISO 14001 basic elements. Both programs require an independent audit of the EMS prior to becoming a member. Independent audits are conducted by parties not directly employed at the location being audited and not directly involved in developing the EMS being audited. The NEPT program requires that before an interested entity may be accepted into the program, its EMS must complete one full cycle (plan-do-check-act). IDEM will require that members have an EMS developed and implemented (plan-do), and that the member demonstrates that the cycle continues via the annual summary mechanism. As indicated earlier, IDEM feels that by encouraging entities in the early stages of progressive environmental management to become members, the program will encourage more entities to take that next step towards proactive environmental management and continuous environmental improvement and provide impetus for senior management to see the value of the environmental management system.
- Community Outreach: The NEPT program identifies community outreach as a separate component of the membership eligibility criteria. The NEPT community outreach component requires identifying and responding to community concerns, informing the community of important matters that affect it, and reporting on the facility's EMS and performance commitments. IDEM feels that these are appropriate community outreach requirements. However, IDEM feels that these elements can be appropriately addressed by the entity's environmental management system. Therefore, IDEM is requiring the same community outreach requirements as a required element of the applicant's environmental management system, providing an annual review mechanism of this important component of the program.

Incentives

Incentives are an integral part of environmental performance based leadership programs.

The decision to join a performance based leadership program will be a business decision for Indiana entities. These incentives offer business value and provide the opportunity to shift limited environmental management resources from certain environmental responsibilities to the entity's EMS and continuous environmental improvement identification and implementation activities. During the program development process, IDEM considered a variety of different incentives. Recognition, networking, and many regulatory incentives based on IDEM policy, procedure, and discretion will be described in more detail in separate ESP and CLEAN program documents. Regulatory incentives that are based on existing state rules may be added to this new article in the future to provide the necessary authority for members to use the incentive. IDEM anticipates using leadership entities to pilot future innovative environmental management strategies through this program. Proposed incentives that prove to jeopardize IDEM's ability to fulfill its environmental protection responsibilities, fail to provide anticipated business value, or create overly burdensome requirements on program members may be removed from the program.

- Recognition Incentives: The most important mechanism created by the ESP and CLEAN programs will be the capacity to recognize Indiana entities that are taking a proactive approach to their environmental management responsibilities and attaining continuous environmental improvements. Ways in which members may receive recognition for their commitment include public recognition via a press release made available to local media outlets, IDEM attendance at an on-site membership announcement, a plaque or framed certificate, use of the ESP program logo in promotional and marketing efforts, recognition at the annual Pollution Prevention Conference, and recognition on IDEM's ESP or CLEAN web page.
- Networking Incentives: Because the members of ESP and CLEAN will be proactively working on continual environmental

improvements, IDEM anticipates that the members will always be searching for new ideas. Networking opportunities can provide a forum for problem solving and the sharing of ideas, successes, and barriers. IDEM intends to organize and facilitate networking opportunities for members of the program.

- **Regulatory Incentives:** Another key element of programs such as ESP and CLEAN is the idea of creating administrative and regulatory changes to encourage exceptional compliance behavior, the use of government resources more efficiently, and improving the environmental economics for members. Good performers who are proactive with respect to environmental management do not require the same level of detailed regulatory oversight as entities without these systems in place and a history of noncompliance. Therefore, in an effort to reduce regulatory transaction costs and regulatory uncertainty for members, the ESP will offer regulatory flexibility opportunities. Some of the regulatory incentives may include streamlined NPDES and air permit renewal processes, consistent contacts within each program area, pre- or post-application meetings, extended Federally Enforceable State Operating Permit (FESOP) and Minor Source Operating Permit (MSOP) terms, alternative compliance monitoring strategies where compliance is demonstrated, lowered routine inspection priority, alternative reporting schedules (certain air permit quarterly reports can be submitted semiannually where deviations will still be reported quarterly), alternative reporting schedules for monthly monitoring reports (MMRs), discharge monitoring reports (DMRs), and monthly reports of operation (MROs), one day advance notice of routine inspections, and expedited permit review where feasible. IDEM anticipates that the resources saved by members will be reallocated toward future continued environmental improvement. IDEM anticipates that regulatory agency compliance resources saved will be reallocated toward entities needing additional oversight and higher risk entities.

The Indiana Environmental Stewardship Program and the Comprehensive Local Environmental Action Network are voluntary programs, therefore, rulemaking is not necessary to initiate the programs. IDEM has chosen to pursue a rulemaking pertaining to each of the regulatory programs (air, water, and solid and hazardous waste) to establish these programs based on new legislation (Public Law 100-206). This rulemaking will provide an opportunity for public input on the programs, to create regulatory incentives, and to provide consistency and clarity for the programs.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. There is no requirement imposed under this rule because it is a voluntary program.

Potential Fiscal Impact

Because this rule is for a voluntary program, there will be no requirements with a fiscal impact. However, members taking advantage of the program could see reduced costs from some of the potential incentives.

Public Participation and Workgroup Information

Numerous public meetings have been held to discuss the intent and details of this program. No workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM also requested public comment from April 1, 2006, through May 1, 2006, on the addition of the CLEAN program to the rule. IDEM received comments from the following parties by the comment period deadline:

Barnes and Thornburg (BT)
Eli Lilly and Company (ELC)
Indiana Cast Metals Association (INCMA)
Indiana Farm Bureau, Inc. (IFB)
International Truck and Engine Corporation (ITEC)
Milestone Contractors, L.P. (MSC)

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

Comment: We support the effort to adopt the program in rules where necessary, but believe timely implementation is most important to gain the benefits anticipated from such a program. We also have some concerns about rulemaking not providing flexibility to quickly adjust a new program that may need to be adjusted as more experience is gained from implementation. (INCMA)

Response: IDEM believes such a program must extend beyond policy and agency discretion to provide the level of desired consistency and value to program members. This is achieved by adopting the program in rules. Very good progress is being made in drafting these rules. Legislation granting IDEM authority to develop such a program has been enacted. IDEM will begin to accept members into the program providing those benefits that are not dependent on rule revisions, but are based on IDEM policy and procedures. Upon completion of this rulemaking, the regulatory flexibility incentives will be available to members. Depending on the nature of future revisions and additions to the program, rulemaking may be needed.

Comment: We believe the federal performance program standards are adequate and that the state should mirror these standards

in setting up a state program. Further, we support reciprocity for the federal and state programs so that they will be linked and eliminate duplicate application submissions. (INCMA)

Response: IDEM's eligibility standards will be closely aligned with those of the federal NEPT program. There will be a few differences in membership eligibility criteria, however. IDEM anticipates that the slight differences will provide Indiana companies that are in compliance and desiring to take the next step with respect to their environmental responsibilities with the motivation and foundation to take that step.

The federal program requires a full one-year EMS cycle to be completed before allowing membership. IDEM aims to encourage Indiana entities to develop an Environmental Management System (EMS) by allowing membership once an EMS is implemented. The federal program requires documentation of two past voluntary environmental improvement initiatives. IDEM aims to encourage participation by entities in the early stages of progressive environmental responsibility. Therefore, IDEM is not requiring documentation of past environmental improvements. The federal program requires members to identify four environmental commitments every three years at the time of application or renewal. IDEM anticipates requiring members to identify three environmental improvement initiatives over the three year membership term. In order to coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets, members of ESP will be asked to identify one initiative each year of membership. The basic environmental management system criteria are similar between the state and federal programs since both follow the plan - do - check - act model.

Since the programs likely will not be exactly the same, membership will not be completely reciprocal. Entities desiring membership in both programs must meet the federal program requirements. However, IDEM does not anticipate that these differences will be burdensome for entities wishing to be members of both programs.

IDEM will be working with the U.S. EPA in the coming months to coordinate applications for membership. IDEM and EPA are aiming for a system as described in this paragraph. If an entity applies for membership in the federal program using the online federal application submittal process, that applicant will be able to check that they are also interested in applying for the state program. Applicants applying for the state program at the same time they are applying for the federal program may be asked a few additional questions on their online federal application. Entities desiring membership in both programs that do not yet meet the federal requirements (for example they are not through a complete EMS cycle or do not yet have documentation of two past environmental achievements), may apply to the state program first, using the state application, then apply to the federal program later or the entity may wait and apply for the two programs together once they meet the federal program requirements. Entities desiring state only membership may apply to the state program using the state application. Members with state only membership will be eligible for state incentives, but will not be eligible for federal incentives.

Comment: We support the concept of a Performance Track program tailored to Indiana. Lilly has monitored the national Performance Track program since its inception, but has not seen any significant advantages to participating since many of the flexibility provisions touted by EPA have not been supported by IDEM. For example, current IDEM policy regarding the Title V permit program specifies quarterly compliance reporting, which prevents us from taking advantage of federal rules promulgated for national Performance Track subscribers requiring only semi-annual reporting. Therefore, we are highly supportive of identifying those opportunities to change rules and/or agency policy to allow recognition of good compliance practice and to allow innovative approaches to compliance. We understand that any such program must result in a higher level of environmental performance. We have many examples of where we can achieve this if certain rules provided more flexibility. (ELC)

Response: IDEM believes the state performance program will provide that desired flexibility and valued incentives for being a member. We encourage entities to submit examples of those specific rules that may be limiting entities ability to go beyond compliance, achieving higher compliance levels and improving environmental quality.

The incentive provided as an example in this comment is a federal program incentive. The federal program incentives will only be available to members of the National Environmental Performance Track Program. In order to take advantage of this benefit, entities would have to apply to and be granted membership in the federal program. IDEM is currently in the process of incorporating the federal incentives into the state rules so that members of the federal program in Indiana may take advantage of them. Once the incentive is fully incorporated into the state rules, federal program members may request to take advantage of the incentive.

Comment: We encourage IDEM to make the program entry compliance requirements flexible so that paperwork violations or permit exceedances where corrective action has been taken do not preclude participation. In some cases these criteria may differ from the national Performance Track criteria. (ELC)

Comment: The primary concern with the federal program is the definition of "in compliance" which IDEM representatives have suggested would not reflect 100% compliance 100% of the time. Few would meet that standard given paperwork issues, etc. that have no reflection on substantive compliance and environmental protection. (INCMA)

Comment: Will this program only apply to sources that are in 100% compliance? If not, what noncompliance is still acceptable for a company to be able to participate in the program? (BT)

Response: The compliance requirements for the state programs have been taken from the federal NEPT program. These compliance criteria include, among other criteria, no criminal conviction or plea for environmentally related violations of criminal laws within

the past five years, no more than two significant violations in the past three years, and no unaddressed, unresolved significant non-compliance or significant violations. This criterion provides allowances for insignificant or relatively minor compliance issues. However, it is IDEM's intent to maintain a high standard of compliance for membership eligibility.

Comment: We would like to see a company-based option of the Performance Track program instead of only the facility-based option. Allowing companies, such as Milestone, with multiple facilities with very few employees (typically three) at each facility to enter the program as a company instead of each individual facility would open up the program to more industries in the State of Indiana. Milestone with three-employee facilities would currently be unlikely to enter the program. Several industries in Indiana are in the same position. (MSC)

Response: In general, IDEM anticipates membership in the program to be determined on a location by location basis, following the eligibility set up of the federal NEPT program. However, IDEM understands that certain organization types are structured such that membership on a location by location basis may be prohibitive of participation. Therefore, IDEM is considering a membership option for organizations meeting certain criteria. Each location must meet the applicability criteria individually and as a group. This includes the requirement to identify environmental improvement initiatives. The initiatives may be similar or the same for all of the locations, but each location must play an active role in each initiative and each location must experience continuous environmental improvement.

Comment: We applaud IDEM for pursuing a Performance Track Program for Indiana businesses. We ask that IDEM please consider agricultural operations for eligibility to participate in the three rulemakings, where applicable. It is important that there are real incentives for producers who go above and beyond the regulatory requirements. Many confined animal feeding operations have a proven record of regulatory compliance and can demonstrate a commitment to continuous improvement. Many of the same benefits that would be attractive to manufacturing concerns would be welcomed by livestock producers who would choose to participate on a voluntary basis. (IFB)

Response: The program will be open to all Indiana entities. It is our belief that the current draft list of regulatory flexibility and incentives afforded to program members does have applicability and value to the agricultural community.

Comment: We support a variety of incentives that recognize different companies value different incentives. Foundry leaders have expressed support for the following:

1. A tax credit for technology innovation or some portion of compliance expenditures.
2. A reduction in permitting fees given a potential reduction in agency oversight expenditures.
3. Reduced inspections and monitoring requirements.
4. Reduced stack testing given it reflects significant expenditures and provides a narrow picture of emissions.
5. Fast tracking permits although this particular item would require more analysis given economic considerations that are important to all companies.
6. Construction/equipment installation flexibility.
7. Reduced compliance reporting to semi-annual which we believe is already allowed under current regulation.

(INCMA)

Response: IDEM's current proposed list of incentives includes many of the items recommended by the foundry industry. However, a reduction in fees or tax credits are not economically feasible at this time, but may be further explored later should there be significant interest.

Comment: The Environmental Performance Track Program should evaluate the benefits of other unique programs and propose such incentives as:

1. Flexibility when permitting new technologies and monitoring systems.
2. EMS based permits.

Both of the above programs would likely provide the additional incentives for companies to see the value of the proposed program. (ITEC)

Response: It is IDEM's intent to develop incentives that provide sufficient business value to those interested in becoming members. Permit flexibility and alternative compliance monitoring requirements are currently included in the proposed incentives list. IDEM is willing to further discuss EMS-based permits, although, such a permitting approach has not been discussed in the context of this program. IDEM is aware of EPA's efforts to explore EMS-based permitting and will continue to stay abreast of developments. Should EMS-based permitting be proven successful in those efforts, IDEM would likely look to members of the state performance based program for piloting an EMS-based permit here in Indiana.

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:

#05-234(SWMB) ESP and CLEAN Programs
Marjorie Samuel

Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251.

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 East, 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) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 3, 2006.

Additional information regarding the ESP or CLEAN Programs may be obtained from Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

Additional information regarding this document and Indiana's rulemaking process may be obtained from Steve Mojonier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at <http://www.in.gov/idem/rules/>.

DRAFT RULE

SECTION 1. 329 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

Rule 1. Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

329 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 1. (a) The Indiana Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program are voluntary performance based leadership programs that offer recognition, regulatory flexibility, and an opportunity to work directly with the department on innovative pilot projects for entities that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement. In accordance with Public Law 100-2006, an entity is not required to comply with this rule except as a provision of participation in these programs.

(b) This rule applies to any Indiana entity that:

- (1) voluntarily participates in either program;**
- (2) meets the eligibility requirements of section 3 of this rule; and**
- (3) maintains membership by complying with this rule.**

(Solid Waste Management Board; 329 IAC 18-1-1)

329 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-11-2-35; IC 13-11-2-51; IC 13-15; IC 13-19

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule:

- (1) "Commissioner", as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.**
- (2) "Comprehensive Local Environmental Action Network Community Challenge Program" or "CLEAN" means the voluntary state program for units of local government in Indiana that:**
 - (A) demonstrate environmental stewardship; and**

- (B) strive for continual environmental improvement.
- (3) “Department”, as defined in IC 13-11-2-51, means the Indiana department of environmental management.
- (4) “Entity” means a company, corporation, firm, enterprise, authority, institution, partnership, or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity is one (1) geographic location under:
 - (A) a single EMS; and
 - (B) the direction of senior management.
- (5) “Environmental aspect” means an element of the activities, products, or services of an entity that has the potential to interact with the environment.
- (6) “Environmental impact” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.
- (7) “Environmental management system” or “EMS” means a continuous cycle of planning, implementing, reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an entity to:
 - (A) maintain compliance;
 - (B) reduce adverse environmental impacts; and
 - (C) increase operational efficiency.
- (8) “Environmental objective” means an environmental goal that is consistent with the environmental policy of an entity.
- (9) “Environmental policy” means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.
- (10) “Environmental Stewardship Program” or “ESP” means the voluntary state program for entities in Indiana that:
 - (A) demonstrate environmental stewardship; and
 - (B) strive for continual environmental improvement.
- (11) “Environmental target” means a detailed performance requirement that:
 - (A) is quantified where practical; and
 - (B) arises from the environmental objectives.
- (12) “Independent audit” means an audit conducted by a party that:
 - (A) is not directly employed by the entity being audited; and
 - (B) has not played a substantive role in implementing the EMS being audited.
- (13) “National Environmental Performance Track Program” or “NEPT” means the U.S. EPA’s National Environmental Performance Track Program.
- (14) “Senior management” means the following:
 - (A) For entities, the person or group with executive responsibility for the entity.
 - (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
 - (C) For a unit of local government, either a principal executive officer or ranking elected official.
- (15) “U.S. EPA” means the administrator of the United States Environmental Protection Agency or the administrator’s designee.

(Solid Waste Management Board; 329 IAC 18-1-2)

329 IAC 18-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 3. Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

- (1) The standard of environmental compliance as described in section 10 of this rule.
- (2) Implement and maintain an EMS as described in section 11 of this rule.
- (3) Conduct continuous environmental improvement initiatives as described in section 12 of this rule.

(Solid Waste Management Board; 329 IAC 18-1-3)

329 IAC 18-1-4 Membership application

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 4. (a) A member of senior management shall submit an application by one (1) of the following methods:

- (1) For applications for either ESP or CLEAN only, to the department on:
 - (A) a form, whether electronically or hard copy, provided by the department; or
 - (B) an equivalent form.
- (2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA.
- (3) Electronic submission is the preferred method of applying to these programs.

- (b) The application shall be signed by a member of senior management. The signature shall:
 - (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
 - (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) A membership for an entity shall be limited to cover one (1) geographic location under a single EMS, except that an entity may apply for membership as a group of locations if the following criteria are met:

- (1) Each location must meet the applicability criteria individually and as a group, including the requirement to identify environmental improvement initiatives.
- (2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:
 - (A) play an active role in each initiative; and
 - (B) demonstrate continuous environmental improvement.
- (3) The EMS must address staff and activities at each location.
- (4) Senior management must be common to all locations.
- (5) All locations must be engaged in the same business activity.
- (6) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

- (1) The EMS must meet the standards in section 11 of this rule.
- (2) A site visit by a representative of the department to provide an understanding of the environmental aspects of the entity and the EMS.
- (3) Identification of environmental improvement initiatives and associated objectives and targets as follows:
 - (A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and targets for the first year of membership.
 - (B) For CLEAN applicants, at least five (5) environmental improvement initiatives and associated objectives and targets for the three (3) year term of membership.
- (4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.
- (5) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;
 as appropriate.
- (6) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Board; 329 IAC 18-1-4)

329 IAC 18-1-5 Term of membership

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 5. (a) The term of membership is three (3) years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

- (b) For ESP members, the department may extend the term for up to one (1) year to:
 - (1) coincide with the membership date in NEPT, if applicable; or
 - (2) cover the time period from the normal three (3) year expiration date to the renewal date based on submittal of an

renewal application by April 1 of the third year.

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submittal of the third annual report, at which time CLEAN members may seek to renew membership in the program. *(Solid Waste Management Board; 329 IAC 18-1-5)*

329 IAC 18-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application by April 1 of the third year of membership as follows:

(1) For renewal applications for ESP only, to the department on:

- (A) a form, either electronically or hard copy, provided by the department; or
- (B) an equivalent form.

(2) For renewal applications for both ESP and NEPT, electronically to U.S. EPA on the form provided by U.S. EPA.

(3) The preferred method of submission for both programs is electronic.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a determination on the ESP renewal application based on the following:

(1) The EMS must continue to meet the standards in section 11 of this rule.

(2) Review of the annual summaries submitted during the previous membership term.

(3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year of membership.

(4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.

(5) Compliance audits conducted by:

- (A) the department;
- (B) the U.S. EPA;
- (C) other state offices; and
- (D) other federal agencies;

as appropriate.

(6) Other information, including the following:

(A) Compliance information obtained from department staff.

(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Board; 329 IAC 18-1-6)

329 IAC 18-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the third annual summary of the previous membership term:

(1) to the department within sixty (60) days after the third annual anniversary of the date the previous membership term began;

(2) clearly indicating the intension to renew membership; and

(3) including five (5) objectives, targets, and action plans for the next three (3) year term.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and five (5) objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to identify at least five (5) environmental improvement initiatives and associated goals for the next three (3) year term of membership.
- (4) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;as appropriate.
- (5) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the third annual summary, then membership in CLEAN expires upon receipt by the department of the third annual summary. (*Solid Waste Management Board; 329 IAC 18-1-7*)

329 IAC 18-1-8 Revocation

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The standards of environmental compliance described in section 10 of this rule.
- (2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application and submittal of the annual summaries.
- (3) The requirement to maintain an approved EMS as required for membership.
- (4) The prohibition against knowingly submitting false information:
 - (A) on the application;
 - (B) in the annual summary;
 - (C) during a site visit or evaluation by the department; or
 - (D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The ESP or CLEAN program requirements, as applicable.
- (2) Federal, state, or local environmental laws and regulations.
- (3) The requirement to meet other appropriate standards as determined by the commissioner based upon the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(c) If the commissioner determines that a situation may warrant revocation of membership, the following applies:

- (1) The commissioner shall notify the entity in writing:
 - (A) of any potential deficiencies found; and

(B) that the commissioner is considering removing the entity from the program.

(2) The notice shall:

(A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;

(B) identify the potential deficiencies; and

(C) provide the entity with thirty (30) days to respond.

(3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(d) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation. *(Solid Waste Management Board; 329 IAC 18-1-8)*

329 IAC 18-1-9 Transfers

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 9. Membership in ESP or CLEAN cannot be transferred to another entity. *(Solid Waste Management Board; 329 IAC 18-1-9)*

329 IAC 18-1-10 Standards of substantial environmental compliance

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that to the best of their knowledge, the entity is currently in compliance with all local, state, and federal environmental laws and regulations.

(b) The department shall:

(1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance; and

(2) consider all relevant and appropriate environmental compliance and enforcement criteria, including, but not limited to, the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance.

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:

(1) Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.

(2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:

(1) Ongoing criminal investigation or prosecution of the entity, or an officer or employee of the entity, for a violation of environmental law.

(2) Three (3) or more significant violations at the entity in the past three (3) years.

(3) Unresolved or unaddressed significant noncompliance or significant violations.

(4) Planned, but not yet filed, judicial or administrative action against the entity.

(5) Ongoing U.S. EPA or state-initiated litigation against the entity.

(6) A situation where an entity is not in compliance with the schedule and terms of an order or decree.

(7) A history of significant problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(Solid Waste Management Board; 329 IAC 18-1-10)

329 IAC 18-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 11. (a) An approved EMS must be implemented before acceptance of an entity into ESP or CLEAN.

(b) An EMS that meets the criteria for ESP and CLEAN must, at a minimum, include the following:

- (1) Evidence of senior management support, commitment, and approval.**
 - (2) A written environmental policy directed toward the following:**
 - (A) Compliance.**
 - (B) Pollution prevention.**
 - (C) Continuous improvement.**
 - (3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.**
 - (4) Identification of the environmental aspects at the entity.**
 - (5) Prioritization of the environmental aspects and a determination of those aspects deemed significant considering, at the minimum, environmental impacts and applicable laws and regulations.**
 - (6) Established priorities and environmental objectives and targets for the following:**
 - (A) Continuous improvement in environmental performance.**
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.**
 - (7) An established community outreach mechanism that includes the following:**
 - (A) Identifying and responding to community concerns.**
 - (B) Informing the community of important matters that affect the community.**
 - (C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.**
 - (D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.**
 - (8) Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.**
 - (9) Evidence of clear responsibility for the following:**
 - (A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.**
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.**
 - (10) Documentation of the implementation procedures and the results of implementation.**
 - (11) Appropriate written EMS procedures.**
 - (12) An annual evaluation of the EMS with written results provided to senior management and affected employees.**
- (c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or ordinance.**
- (d) The department shall determine if the EMS meets the criteria in subsection (b).**
- (e) A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:**
- (1) audited by an independent party; or**
 - (2) registered pursuant to a recognized certification standard.**

(Solid Waste Management Board; 329 IAC 18-1-11)

329 IAC 18-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:

- (1) For ESP, a member of senior management shall identify three (3) continuous environmental improvement initiatives for each membership term. One (1) initiative shall be identified at the time of the initial or renewal application, and the remaining initiatives shall be identified each year at the time the annual summary is submitted to the department.**
- (2) For CLEAN, a member of senior management shall identify five (5) continuous environmental improvement initiatives for the three (3) year membership term.**

(b) Entities accepted into ESP or CLEAN shall:

- (1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and
- (2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:

- (1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.
- (2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:

(A) include objectives and targets beyond current legal requirements; and

(B) as applicable, specify the:

- (i) environmental media;
- (ii) types of pollution to be prevented or reduced;
- (iii) implementation activities; and
- (iv) projected time frames.

- (3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department.

(Solid Waste Management Board; 329 IAC 18-1-12)

329 IAC 18-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:

- (1) Verification of continued progress toward the objectives and targets.
- (2) A description of the reason the objectives and targets have not been attained.

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:

- (1) cover the twelve (12) month calendar year;
- (2) be submitted to the department for each year by April 1 of the following year; and
- (3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.

(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall constitute an equivalent submission. *(Solid Waste Management Board; 329 IAC 18-1-13)*

329 IAC 18-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the five (5) environmental improvement initiatives.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the third annual summary is submitted, a member of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began. (Solid Waste Management Board; 329 IAC 18-1-14)

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 September 19, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, the Solid Waste Management Board will hold a public hearing on a new article at 329 IAC 18.

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 new article. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding the Environmental Stewardship Program may be obtained from Daniel Murray, Assistant Commissioner, Office of Pollution Prevention and Technical Assistance, (317) 233-6658 or (800) 451-6027 (in Indiana). Additional information regarding this hearing may be obtained from Steve Mojonier, Office of Land Quality, (317) 233-1655 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: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

or call (317) 232-3077(V) or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 711 or 1-800-743-3333. Please provide a minimum of 72 hours notification.

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

Bruce H. Palin
Assistant Commissioner
Office of Land Quality