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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #06-147(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING THE SCORING MODEL AT 329 IAC 7.1 FOR HAZARDOUS SUBSTANCE RESPONSE SITES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on plans to repeal 329 IAC 7 and replace the current article with a new article, 329 IAC 7.1. The proposed new rules would continue to protect human health and the environment while increasing efficiency and improving accountability. 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 7; 329 IAC 7.1.

AUTHORITY: IC 4-22-2; IC 13-14-8-2; IC 13-14-9; IC 13-19-3; IC 13-25-4-7.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This new article would establish new criteria and procedures for a priority ranking system of hazardous substance response sites in Indiana to ensure that those sites believed to pose the most significant threat to human health or the environment are scheduled first for response and for appropriate allocation of department resources. The current scoring model has become ineffective and cumbersome and staff time required to score a site is excessive. In addition, the commissioner's bulletin does not accurately reflect the real time status of cleanups. This rulemaking proposes to repeal the existing scoring model at 329 IAC 7. All parties involved with any hazardous response site not on the National Priorities List will be affected by this rulemaking.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Maintain the status quo and continue to use an outdated scoring model. Currently not all sites are scored so the commissioner's bulletin does not present an accurate accounting of remediation sites.

- 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 the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state-only" requirement under IC 13-25-4-7.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Amend the current scoring model and completely rewrite 329 IAC 7.

- 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? No, this alternative is not imposed by federal law, but the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state only" requirement under IC 13-25-4-7.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable

Alternative 3. Repeal the current Article 329 IAC 7 and propose a new article consisting of an updated and more consistent scoring model.

- Is this alternative an incorporation of federal standard or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, this alternative is not imposed by federal law, but the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state only" requirement under IC 13-25-4-7.
- 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

None applicable.

Potential Fiscal Impact

No potential fiscal impact on affected parties from any of the alternatives. IDEM will be able to utilize existing resources to administer the rule.

Small Business Assistance Information

IDEM established a Compliance and Technical Assistance Program (CTAP) under IC 13-28-3. This 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

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Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-8922 or (800) 451-6027 (in Indiana).

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:

#06-147(SWMB) New scoring model

Marjorie Samuels

Rules, Planning and Outreach Section

Office of Land Quality
Indiana Department of Environmental Management
100 North Senate, Room 1101
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, 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 Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 30, 2006.

Additional information regarding this action may be obtained from Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8922 or (800) 451-6027 (in Indiana).

Bruce Palin
Assistant Commissioner
Office of Land Quality