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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD LSA Document #06-182(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 9 CONCERNING ADDITIONAL MEASURES TO PROTECT GROUND WATER

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 329 IAC 9, Underground Storage Tanks, concerning additional measures to protect ground water by requiring new and existing tanks and piping to have secondary containment within one thousand (1,000) feet of any community public water supply system or potable drinking water well. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. 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 9.

AUTHORITY: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2.

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 Energy Policy Act of 2005 bill, Public Law 109-58, effective August 8, 2005, contained under Subtitle B the Underground Storage Tank Compliance Act. Under Section 1530 of the Act, Congress requires additional measures to protect ground water by requiring one of the following:

1. Each new underground storage tank or piping connected to any such new tank, installed after February 8, 2007, or any existing underground storage tank, that is replaced after February 8, 2007, must be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well; or

2. A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank.

Subtitle B the Underground Storage Tank Compliance Act also contained a requirement for United States Environmental Protection Agency (EPA) to issue regulations or guidelines for implementing these requirements. The draft guidelines, containing the requirements for implementation, were published in May 2006 and are contained in this rule.

Certain definitions already in 329 IAC 9 are proposed to be moved to different sections so the definitions can continue to be in alphabetical order.

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 or the required federal guidance.

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

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking concerning additional measures to protect ground water by requiring secondary containment for new and replaced underground storage tanks and piping within one thousand (1,000) feet of any community water system as required by federal law. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) Indiana is required by federal law to adopt the provisions of Subtitle B, the Underground Storage Tank Compliance Act, contained in the Energy Policy Act of 2005, Public Law 109-58, effective August 8, 2005, and the required EPA guidelines to implement this federal law.
- (2) This rulemaking proposes adoption of the federal requirements.
- (3) The public will benefit from prompt adoption of this law, because it will provide for additional measures to protect ground water by requiring secondary containment for new and replaced tanks and piping within one thousand (1,000) feet of any community water system and potable drinking water wells.
- (4) Indiana is required to adopt the secondary containment requirements by February 2007.
- (5) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternative 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 this rule.
- (6) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENT

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#06-182(SWMB) [UST Change Rule]

Marjorie Samuel
Rules, Planning, and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor receptionist desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana during normal business hours.

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 August 1, 2006.

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 9-1-18.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-18.5 “Existing” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 18.5. “Existing” means that a:

- (1) tank;**
- (2) piping;**
- (3) motor fuel dispensing system;**
- (4) facility;**
- (5) community public water supply system (CPWSS); or**
- (6) potable drinking water well;**

is in place prior to beginning the installation or replacement of a tank, piping, or motor fuel dispensing system. The term includes a potable drinking water well that the UST owner has or will install at a new underground storage tank facility regardless of whether the well is installed before or after the tanks, piping, and motor fuel dispenser systems. (Solid Waste Management Board; 329 IAC 9-1-18.5)

SECTION 2. 329 IAC 9-1-27.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.5 “Interstitial monitoring” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.5. “Interstitial monitoring” means a release detection method that continuously monitors the interstitial space of an underground storage tank and piping. The term includes only those release detection systems that are capable of detecting a breach in the primary containment of the underground storage tank and piping component being monitored before the regulated substance or petroleum stored is released to the environment. (Solid Waste Management Board; 329 IAC 9-1-27.5)

SECTION 3. 329 IAC 9-1-27.6 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.6 “Interstitial space” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.6. “Interstitial space” means the space between the primary and secondary containment systems. (Solid Waste

Management Board; 329 IAC 9-1-27.6)

SECTION 4. 329 IAC 9-1-27.8 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.8 “Karst terrains” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.8. “Karst terrains” means an area where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present to karst terrains include any of the following:

- (1) Sinkholes.**
- (2) Sinking streams.**
- (3) Caves.**
- (4) Large springs.**
- (5) Blind valleys.**

(Solid Waste Management Board; 329 IAC 9-1-27.8)

SECTION 5. 329 IAC 9-1-37 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-37 “Pipe” or “piping” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 37. (a) “Pipe” or “piping” means a hollow cylinder or tubular conduit that is constructed of nonearthen materials that routinely contains and conveys regulated substances from the tank or tanks to the dispenser or other end-use equipment.

(b) The term does not include vent, vapor recovery, or fill lines that do not routinely contain regulated substances. *(Solid Waste Management Board; 329 IAC 9-1-37; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 6. 329 IAC 9-1-40.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-40.5 “Replaced” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 40.5. “Replaced” means the permanent removal from service and the new installation of any of the following:

- (1) An underground storage tank.**
- (2) More than fifty percent (50%) of the length of any underground piping between the tank and the dispenser or other end-use equipment at any one (1) time.**
- (3) A motor fuel dispenser system and the equipment necessary to connect the dispenser to the underground storage tank system. For purposes of this definition, this equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.**

(Solid Waste Management Board; 329 IAC 9-1-40.5)

SECTION 7. 329 IAC 9-1-41.8 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-41.8 “Secondary containment” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 41.8. “Secondary containment” means a release detection system that meets the requirements of 329 IAC 9-7-4(7), but does not include an under-dispenser spill containment system. *(Solid Waste Management Board; 329 IAC 9-1-41.8)*

SECTION 8. 329 IAC 9-1-45.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-45.5 “Under-dispenser spill containment” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 45.5. (a) “Under-dispenser spill containment” means a device that is capable of preventing an unauthorized release from under the dispenser from entering the soil or ground water or both.

(b) Such containment must:

- (1) not allow liquid to penetrate on any side, bottom, and penetrations;**
- (2) be compatible with the substance conveyed by the piping; and**
- (3) allow for visual inspection and access to the components in the under-dispenser spill containment system.**

(Solid Waste Management Board; 329 IAC 9-1-45.5)

SECTION 9. 329 IAC 9-2-1.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-2-1.2 New or replaced UST systems within 1,000 feet of a community public water supply system or potable drinking water well

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-11-2-241; IC 13-18-17-6; IC 13-23-3

Sec. 1.2. (a) This section applies to the following:

- (1) A new or replaced UST system that is installed within one thousand (1,000) feet of any existing community public water supply system (CPWSS) as defined in rules of the water pollution control board at 327 IAC 8-4.1-1(5) or any existing potable drinking water well.**
- (2) Piping using a suction system for product delivery under 329 IAC 9-7-2(2)(B).**
- (3) Tanks used for emergency power generation that are deferred from release detection under 329 IAC 9-1-1(d).**

(b) A new or replaced UST system that is installed within one thousand (1,000) feet of an existing CPWSS or any existing potable drinking water well must meet the following requirements:

(1) The underground storage tank must be a secondarily contained tank and meet the following conditions:

- (A) An interstitial monitoring device that must be located in the interstitial space between the walls and is monitored continually.**
- (B) Was or will be installed, calibrated, operated, and maintained in accordance with the manufacturer’s instructions, including routine maintenance and service checks for operability and running conditions.**
- (C) Is able to contain regulated substances released from the tank system until the regulated substances are detected and removed.**
- (D) Is able to prevent the release or regulated substances to the environment at any time during the operational life of the underground storage tank system.**
- (E) Meets the appropriate following standards:**
 - (i) Underwriters Laboratory Standard 58, “Steel Underground Tanks for Flammable and Combustible Liquids”, 1986, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.**
 - (ii) Underwriters Laboratory Standard 1316, “Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures”, 1994, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.**
 - (iii) Steel Tank Institute Standard F841-01, “Standard for Dual Wall Underground Steel Storage Tanks”, 2001, 570 Oakwood Road, Lake Zurich, IL 60047.**

(2) Piping installation must be secondarily contained piping and meet the following conditions:

- (A) An interstitial monitoring device that must be located in the interstitial space between the walls and meet the following as appropriate:**
 - (i) The interstitial space is under a vacuum or pressure.**
 - (ii) The interstitial space is liquid-filled.**
 - (iii) The interstitial space is monitored continually.**
- (B) Was or will be installed, calibrated, operated, and maintained in accordance with the manufacturer’s instructions,**

including routine maintenance and service checks for operability and running conditions.

(C) Monitoring devices between the inner and outer barriers of the tanks and piping that can detect a leak or release of product from the primary barrier.

(D) Meets the standard Underwriters Laboratory Standard 971, "Nonmetallic Underground Piping for Flammable Liquids", 1986, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(E) Is either of the following:

(i) One hundred percent (100%) secondarily contained.

(ii) Secondarily contained piping with single-walled piping ends that terminate in tank and dispenser sumps.

(c) In the case of a new underground storage tank system consisting of one (1) or more underground storage tanks and connected by piping, subsection (b) applies to all underground storage tanks and connected pipes comprising the underground storage tank system.

(d) In the case of a replaced UST system or replaced existing piping connected to the underground storage tank, subsection (b) applies only to the specific underground storage tank or piping being replaced and not to other underground storage tanks and connected pipes comprising the underground storage tank system.

(e) Each installation of a new motor fuel dispenser system must include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing CPWSS or any existing potable drinking water well.

(f) Any owner or operator of a new or replaced tank, piping, or motor fuel dispenser system not meeting the requirements of this section after February 8, 2007, must demonstrate that the tank, piping, or motor fuel dispenser system are not within one thousand (1,000) feet of a CPWSS or public drinking water well.

(g) For purposes of this section, "potable drinking water well" means any dug, driven, drilled, or bored hole that extends into the earth until it meets a water-bearing formation, such as an aquifer, consisting solely of ground water or ground water under the direct influence of surface water that provides water deemed suitable for people to drink in its ambient state or after treatment as approved by the state. Such wells may be either privately or publicly owned and may provide water to a single-family residence, a group of residences, or a community.

(h) For purposes of this section, underground storage tank as defined under IC 13-11-2-241 does not include tank combinations or more than a single underground pipe connection to a tank. (Solid Waste Management Board; 329 IAC 9-2-1.2)

SECTION 10. THE FOLLOWING ARE REPEALED: 329 IAC 9-1-27.4; 329 IAC 9-2-1.1.

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on September 19, 2006, at 1:30 p.m., in the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on amendments to 329 IAC 9 concerning additional measures to protect ground water by requiring new and replaced tanks and piping to have secondary containment within one thousand (1,000) feet of any community public water supply system or potable drinking water well.

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 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) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service (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, 11th Floor, Indianapolis, Indiana and are open for public inspection.