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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #22-13

**LEGITIMATE USE OF SOLID WASTE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 10-3](#), [329 IAC 11-3](#), [329 IAC 11.7](#), and new rules at [329 IAC 11-3.5](#), concerning the legitimate use of solid waste. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 10-3](#); [329 IAC 11-3](#); [329 IAC 11-3.5](#); [329 IAC 11.7](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

IDEM is proposing to amend the requirements for the solid waste management activity exclusions at [329 IAC 10-3](#) and [329 IAC 11-3](#), establish new rules for the legitimate use of solid waste at [329 IAC 11-3.5](#), and amend the alternative fuel requirements in [329 IAC 11.7](#). The rulemaking is in response to the enactment of [IC 13-19-3-1.3](#), which gave authority to the Environmental Rules Board to adopt rules establishing standards and procedures for the legitimate use, instead of disposal, of material otherwise defined as a solid waste or hazardous waste. The only existing solid waste management activity exclusions that are likely to be affected are the commissioner's determination for legitimate use at [329 IAC 10-3-1\(16\)](#) and [329 IAC 11-3-1\(13\)](#) and the alternative fuel exclusion at [329 IAC 11-3-1\(18\)](#). Additional amendments in [329 IAC 10-3](#) and [329 IAC 11-3](#) will be considered to clarify the requirements for the solid waste exclusions and legitimate use of solid waste. IDEM will draft new rules at [329 IAC 11-3.5](#) that will add specific requirements for the legitimate use of solid waste. Amendments to the alternative fuel rules in [329 IAC 11.7](#) will make updates for the acceptable use of alternative fuel as a legitimate use of solid waste.

Under current rule requirements, any person or entity that seeks a legitimate use exclusion from the solid waste management requirements must obtain approval from the commissioner through a regulatory process that lacks specific and detailed requirements. The existing rules do not include minimum criteria for showing that a legitimate use is beneficial and does not pose a threat to public health and the environment. The processes for legitimate use submittal, determination, approval, maintenance, and renewal are based on internal departmental procedures that might be difficult for regulated entities to fully understand and follow.

Through this rulemaking, IDEM will propose rule requirements for the legitimate use of solid waste that will provide alternatives to landfilling or incinerating solid waste or operating under a solid waste processing facility permit. Elements of the proposed rule requirements include the following:

- Standards, criteria, and procedures for the determination of a legitimate use, including the establishment of legitimacy criteria.
- Consideration of a mix of permitting methods, including notifications, registrations, and permits, depending upon the type of material and how it is used.
- Proper storage, handling, and record keeping requirements.
- Circumstances under which the use of a material is not considered to be a legitimate use, such as for speculative accumulation or sham recycling.
- Standards for the denial of a legitimate use request, which may include requirements similar to the good character standards in [IC 13-19-4](#) that consider previous complaints against an applicant for violation of state or federal environmental protection law.
- Streamlined processes for common legitimate uses of specific types of waste or material, such as asphalt shingles.
- Financial assurance requirements for legitimate uses that involve storage of waste or material.
- Amendments to the alternative fuel rules in [329 IAC 11.7](#) to clarify that the acceptable use of alternative fuel is a legitimate use of solid waste, expand the percentage of alternative fuel that is acceptable use, and enable the blending of acceptable alternative fuels.

This rulemaking may affect persons and entities that are applicants for the legitimate use of solid waste or currently have a legitimate use approval. Because the legitimate use of solid waste is an alternative for regulated entities, compliance with the amendments in this rulemaking will not be mandatory for entities that manage solid waste under Indiana's rules. Only entities or persons that choose to pursue legitimate use will be subject to the requirements of the rulemaking.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend the solid waste management activity exclusions at [329 IAC 10-3](#) and [329 IAC 11-3](#) and alternative fuel requirements at [329 IAC 11.7](#) to implement the legitimate use of solid waste, as defined in [IC 13-11-2-118.4](#) and authorized in [IC 13-19-3-1.3](#). In addition, draft new rules at [329 IAC 11-3.5](#) that specify the requirements for the legitimate use of solid waste.

- 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 and there is no comparable federal law. It is a "state-only" requirement.
- 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. Do not amend existing 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 and there is no comparable federal law. It is a "state-only" requirement.
- 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**

While various federal rules and laws apply to the management of solid waste in delegated states, such as the Resource Conservation and Recovery Act, there are no federal rules or laws specifically applicable to the legitimate use of solid waste in Indiana. The authority to adopt rules for the legitimate use of solid waste was enacted by the Indiana General Assembly and codified into the Indiana Code. Legitimate use is an optional, state-only program for persons and entities that choose to manage solid waste through an alternative process. Compliance with the legitimate use requirements is an alternative to the solid waste processing, storage, disposal, and management requirements elsewhere in [329 IAC 10](#), [329 IAC 11](#), and other Indiana solid waste rules, as applicable.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative may have a potential fiscal impact for persons and entities that choose to pursue the compliance alternatives made available by the proposed amendments. This rulemaking will not impose additional costs on regulated entities because it provides an optional alternative to other processing or disposal of solid waste. However, legitimate use of solid waste under the proposed rule may either result in cost savings or a greater expenditure than processing or disposal. While a regulated entity may avoid landfill or processing costs, factors associated with a legitimate use that is protective of public health and the environment may result in costs equal to or exceeding the cost of disposal.

Additionally, the regulated entity may value nontangible benefits such as a zero-waste facility, saving landfill space, conserving resources, and reducing energy costs. The alternative process of legitimate use may also reduce the regulatory burden on generators of solid waste. The entity will make the decision on whether to utilize this compliance alternative based on their own cost-benefit analysis and IDEM will not require any entities to choose legitimate use. IDEM would like to encourage reuse and recycling, and envisions value in legitimate use even if certain uses may have a higher cost than other processing or disposal.

Potential Fiscal Impact of Alternative 2. This alternative will not have a potential fiscal impact because it does not amend the existing requirements for exclusion from the solid waste management rules. However, in the absence of amendments to the existing rules, some regulated entities will be required to comply with requirements that do not offer the compliance alternatives and potential cost savings from the proposed amendments in Alternative 1.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) 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 CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

(317) 233-0572 or (800) 988-7901  
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Emily Criss Totten  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 402-3062  
etotten@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
emoorhou@idem.in.gov

### Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov), (317) 234-5345 or (800) 451-6027 (in Indiana).

### 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.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #22-13 Legitimate Use of Solid Waste  
Dan Watts  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

### COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than February 25, 2022.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov), (317) 234-5345 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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