

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #22-13

LEGITIMATE USE OF SOLID WASTE

PURPOSE OF NOTICE

A First Notice of Comment Period was published on January 26, 2022, in the Indiana Register (DIN: [20220126-IR-329220013FNA](#)) for amendments to rules at [329 IAC 10-3](#), [329 IAC 11-3](#), and [329 IAC 11.7](#), and new rules at [329 IAC 11-3.5](#), concerning the legitimate use of solid waste. Following the enactment of related legislation during the 2022 session of the Indiana General Assembly, the Indiana Department of Environmental Management (IDEM) is providing an additional 30 days for submission of comments on the rulemaking. Public Law 120-2022 includes statutory changes that amended Indiana's statutory definition of "solid waste" at [IC 13-11-2-205](#) and the types of activities and materials that may meet the legitimate use requirements. IDEM will consider these statutory changes in the development of draft rule language for this rulemaking and additional comments about the legitimate use of solid waste in response to these statutory changes. Comments submitted to IDEM from the original First Notice of Comment Period are considered part of the formal written comment period. With this notice, 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: January 26, 2022, Indiana Register (DIN: [20220126-IR-329220013FNA](#)).

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 granted 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 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 a compliance alternative for regulated entities, compliance with the amendments in this rulemaking will be optional 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.

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. 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 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 October 14, 2022.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, 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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