SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 19, 2006, the Solid Waste Management Board conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 9 concerning additional measures to protect ground water from leaking underground storage tanks. IDEM received comments from the following parties:

Scott Imus, Executive Director, Indiana Petroleum Marketers and Convenience Store Association (IPCA)

Maggie McShane, Executive Director, Indiana Petroleum Counsel (IPC)

The following are the comments received at the hearing and IDEM's responses thereto:

Comment: My name is Maggie McShane. I'm Executive Director of the Indiana Petroleum Council, and the Council is a trade association that is based here locally, and our members are comprised of the major oil companies that have assets and conduct business in the State of Indiana.

I'm here today representing those members, and in addition, I'm wearing a second hat today. I'm also here to speak on behalf of the Indiana Petroleum Marketers and Convenience Store Association, and their Executive Director, Mr. Scot Imus, unfortunately had another obligation and another hearing this afternoon, exactly at this very time, and asked that I speak on behalf of their organization, too. His organization represents the oil marketers, and sometimes people that we refer to as jobbers in our business.

These are Mr. Imus' comments: Mr. Chairman and Board members, this letter provides the Indiana Petroleum Marketers and Convenience Store Association's comments to the Solid Waste Management Board on the preliminary adoption of LSA No. 6-182, amendments to rules at 329 IAC 9 concerning additional measures to protect ground water. The IPCA represents Indiana's petroleum marketing and convenience store industry and has more than 300 corporate members who work in the petroleum supply and distribution industry. These small to medium-sized businesses own and operate thousands of service stations and convenience stores and their related underground storage tanks throughout the State of Indiana.

Number one, Board consideration of this rule is premature in that the U.S. Environmental Protection Agency has yet to issue final guidance on this matter. The proposed rule arises out of provisions in the Energy Policy Act of 2005, PL 109-58, specifically Section 1530 of the Act, which requires each new underground storage tank or piping installed or reinstalled after February 8th, 2007 to be secondarily contained if it's within one thousand feet of any existing community water system or any existing potable drinking water well, or -- and this is the important point -- or evidence of financial responsibility for the person that manufactures a UST or piping for a UST, or installs a UST.

The rule you're considering today is based solely upon the inference by statutory language adopted by Congress, as the U.S. EPA has yet to issue any final guidance that would serve to better direct state regulatory agencies in the regulated community. For instance, what is meant by an existing community water system? Is that subject to a broad interpretation, such as any closed residential water line, or will it be defined more narrowly? Until U.S. EPA gives such final guidance, the State of Indiana will not be certain if this rule complies with the full intent of Section 1530. The argument has been advanced that this rule needs to go forward now or the state could lose potential federal funding. We do not believe this will be the case. In fact, EPA officials have stated privately that there will be no withholding of funds as long as the state regulatory agencies are awaiting EPA to fulfill their responsibilities. As such, the IPCA is aware that only Indiana and a very small number of other states are proceeding with similar rulemaking at this time. (IPCA) (IPC)

Response: It is not premature but timely to adopt the federal law into the Indiana rule now. It will be effective on or around the time the federal law requirements are effective. This rule is based on the latest federal guidance and any changes to the guidance will be amended into the rule.

Comment: Point two: Contrary to the supporting documents, there are several financial costs -- there are severe financial costs associated with this rule. Members of IPCA installing or reinstalling UST's will see their costs increase dramatically if secondary containment is required.

Consider the following price quotes that were taken this week from a tank distributor: A 10,000-gallon tank, single walled, $10,500; a 10,000-gallon tank, double walled, $22,940. For a 20,000-gallon tank, single walled, $20,960; double walled, $44,980. A typical small site with one 20,000-gallon tank and one 10,000-gallon tank would see tank costs increase from 31,460 to 67,920, or by 116 percent. (IPCA) (IPC)

Response: Because the federal law requires secondary containment for UST systems within 1000 feet of a community water supply system, there is no additional cost incurred as a result of this state rule.

Comment: Point no. 3: Other options were not considered which could provide greater environmental protection in a more cost-efficient manner. In Section 1530 of the Act, Congress did provide regulatory agencies in a regulatory community with several options that could be taken to achieve compliance. As an alternative -- As an alternative, regulators have the flexibility to require tank manufacturers, piping manufacturers or tank installers to maintain financial responsibility. That option is not included in this rulemaking. (IPCA) (IPC)

Response: All options were considered. The Indiana Solid Waste Management Board does not have the authority to require financial assurance of manufacturers or installers. Even if the Board had such authority it is not clear how the rule could extend to apply to manufacturers and installers that are located out-of-state. In addition, even if all these obstacles were removed, it is IDEM's position that it is better to prevent a release with secondary containment than require financial assurance that would not be used until after a release occurs.

Comment: If I may now switch over to my comments from the Petroleum Council, we'd like to reinforce what Mr. Imus said and suggest to the Board that undertaking this rulemaking at this time is premature, and for the state to adopt rules prior to clear federal guidelines is a risk-laden approach that could very well jeopardize our future funding and ability to comply with the very grant requirements that are set up by the Federal Government.

This Energy Policy Act of 2005 is -- there's more than 500 pages contained in that Act. Only about 15 of those apply to this particular rulemaking that we're talking about now, but there are many provisions in that than the small 15 pages that are not included in this rulemaking: Financial assurance as an option, financial responsibility as an option, secondary containment, which is a good thing when it's necessary, but for small business people, very costly. (IPC)

Response: All options were considered. The Indiana Solid Waste Management Board does not have the authority to require financial assurance of manufacturers or installers. Other provisions of the federal law will need to be implemented by other agencies or as an IDEM policy.

Comment: In addition, there's an inspection program that's not contained in this rule, there is prohibitions on deliveries of noncompliant tanks that has been omitted, and numerous other provisions that are not being addressed in this rulemaking. We suggest the state is moving too quickly --I understand -- and ask you to wait for the federal guidelines and not risk us losing federal grant money that would be available in the future. (IPC)

Response: It is not a policy of the department to write state rules that impose requirements such as inspection frequencies on the department. The changes to the inspection program and fuel delivery prohibition will be handled under departmental policy or by other state agencies.

Comment: That is federal law, so the Act was signed almost exactly a year ago. EPA, in private conversations, has recognized that the time lines in that Act were completely unreasonable. Fewer than -- I would say, approximately about half a dozen states are in the process of rulemaking, whatever -- as we all know, each state has a different process. One state, the State of Massachusetts, has adopted the option of financial responsibility. That option is important for folks to consider, because certainly secondary containment or double lining, double walling of tanks is a good measure to prevent leaks, but what folks in our industry have found is that when there has been a release in a tank that was upgraded, you know, a compliant underground storage tank, when a release occurred nevertheless, it -- more often than not, that release occurred because the tank wasn't installed properly. Either it was poorly installed by a contractor that did not do a good job, or there were errors in the manufacturing process that resulted in the integrity being challenged. That's why, from a purely environmental protection standpoint, making those folks, you know, provide financial responsibility is a good option for the state to have as opposed to uniformly. (IPC)

Response: Indiana is taking a proactive approach in considering that secondary containment will prevent a leak and contamination from occurring. Financial assurance does not prevent a leak and contamination from occurring but only provides clean-up funds after a leak and contamination has occurred. Owners and operators can hold tank and piping manufacturers accountable through a contract. From an environmental protection standpoint, the secondary containment option is clearly better.

Comment: If I'm a convenience store and I remove a tank or install a tank on February 9, 2007, do I -- this can be just a short answer, yes or no -- am I obligated to comply with the current federal

standards that have been passed by Congress? Absolutely, that's federal law, and the federal law gives you two options. (IPC)

Response: It is important for consistency and clarity that the federal law be reflected in state rule by the effective date of the federal law.