

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

LSA Document #18-481

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 8, 2019, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 3.1, 329 IAC 10, 329 IAC 11, and 329 IAC 13. Comments were made by the following party:

Malika Butler, Indiana Manufacturers Association (MB)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The Indiana Manufacturers Association recommends that the Indiana Department of Environmental Management consider the adoption of the updated 2018 revision of the Definition of Solid Waste Rule in Title 40 of the Code of Federal Regulations as a whole. Efficient regulatory framework is instrumental in the impact of manufacturing investment and maintaining Indiana's competitiveness and sound businesses climate. The proposed rule will require companies to reference at least six different entries in the Federal Register rather than simply referencing the 2018 revision.

In order to reduce the risk of incurring penalties and potential legal issues, regulatory certainty and transparent common-sense framework is imperative for business. We strongly encourage IDEM to move forward with the adoption of the 2018 Definition of Solid Waste final rule to ensure businesses and the state of Indiana has a consistent and clear definition of legitimate recycling of hazardous secondary materials. (MB)

Response: IDEM was not able to propose the adoption of the 2018 version of the CFR for Title 40 because the initiation of this rulemaking occurred before the publication of 2018 version of the CFR and the 2018 revision to the definition of solid waste rule. The Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7 and Second Notice of Comment Period (DIN: 20181121-IR-329180481FDA) does not mention the adoption of these requirements and including them may be deemed outside the scope of this rulemaking.

IDEM is aware of the gap in Indiana's hazardous waste rules surrounding the definition of legitimate recycling of hazardous secondary materials at 40 CFR 260.43. Indiana's definition of legitimate recycling is affected by a statutory provision at IC 13-14-9-8(h), which automatically vacates a state requirement adopted under the rulemaking process at IC 13-14-9-8, if the federal requirement associated with the state requirement is vacated. Indiana adopted the 2015 definition of legitimate recycling in LSA Document #16-93 under the rulemaking process at IC 13-14-9-8. An order issued by the United States Court of Appeals for the D.C. Circuit, followed by a subsequent final rule published by U.S. EPA, vacated Factor 4 of the 2015 definition of legitimate recycling. The court order and final rule replaced the vacated language with the 2008 version of Factor 4, which requires only that the factor be "considered" when making a determination on legitimate recycling rather than the factor be required. After the vacatur, Indiana's definition of legitimate recycling includes only Factors 1 through 3, which

differs from the federal definition.

Because of the timing involved with the initiation of this rulemaking and the publication of the 2018 revision to the definition of solid waste rule, and the need to expediently adopt other recent updates to the hazardous waste rules, IDEM is not addressing the recent updates to the definition of solid waste in this rulemaking. IDEM does plan to address matters related to the definition of solid waste and legitimate recycling in a future rulemaking.