MINUTES
WATER QUALITY RULES, TRIENNIAL REVIEW AND RELATED TOPICS
POLICY DISCUSSION

Indiana Department of Environmental Management
2525 North Shadeland Avenue
Conference Room C
Indianapolis, Indiana
9:00am to Noon E.S.T.
June 24, 2002

Introduction:

On Monday, June 24, 2002, IDEM staff met with a wide variety of stakeholders to discuss how to build consensus for the triennial review process. This document provides a summary of the themes of the discussion and provides notes from the discussion. The notes are not intended to be a transcript of the meeting, but rather a summary of the major points from the meeting.

Summary:

The following common themes ran through the discussion regarding how to build consensus for the triennial review process:

1. **Identify the issues.** Put the issues on the radar screen, reach consensus that these are important issues.
2. **Conduct Public outreach.** Conduct a series of public meetings in four or five areas of the state
3. **Categorize issues.** Some categories might include:
   A. "No brainers"
   B. Issues that are technical/scientific in nature
   C. Issues that present roadblocks to NPDES, TMDLs or other work
   D. Issues that would create opportunities to improve water quality
4. **Prioritize issues** ("triage").
5. **Recruit expert advice.** Seek expert input by sending specific questions on the prioritized issues to universities.
6. **Create workgroups** to work on particular, specific issues.
   A. Goals should be clearly articulated for the work groups
   B. Small groups should have independent note takers to ensure an accurate reflection of the consensus, or lack of it.
   C. Provide institutional memory for workgroup (past rule language, other information)
   D. The work group could develop white papers.
   E. Define the role of science in each work group. That is, know whether issues require need strong analytical, statistical, or other scientific data.

F. Include technical and legal people as well as policy people. IDEM OLC and outside legal counsel to help frame, up front, the legal role in these issues.

G. Workgroups should be involved in the development of rule language.

7. **Develop timeframes.**
8. **Involve EPA staff** as a resource in the process.
9. **Maintain a steering committee.** Workgroups would report back to the committee and the committee focuses on process.

Minutes:

The meeting was called to order by Tim Method. Those present for all or part of the meeting were: Michaela Kendall, Marvin Ellis, Chad Frahm, Mark Thornburg, Mike Biase, Bowden Quinn, Tom Neltner, Art Umble, Ted Rhinehart, Tonya Galbraith, Kari Evans, Vince Griffin, Eric Fry, Tim Lohner, Bill Beranek, Evan Haas, Neil Parke, Patrick Bennett, Ted Rhinehart, Jane Dustin (via conference call), Ron Turco, Charlotte Read, Tom Anderson, Dave Wagner and Glenn Pratt.

In addition, the following IDEM staff members were present for all or part of the meeting: Bruno Pigott, David Kallander, Dennis Clark, John Elliott, Jon Mangles, Kiran Verma, Larry Wu, Lonnie Brumfield, MaryAnn Stevens, Mary Ellen Gray and Megan Wallace.

1. After introductions, Tim Method acknowledged that a lot of work had been done during 1998 to 1999 and that many of those present were involved with those efforts. While the work was still there, it had been a number of years and it might be worthwhile to rethink through the process involved. He stated that before pen is put to paper we should reach as much agreement possible on key policy issues and the direction taken.

2. Mr. Method identified the IDEM staff who are leads of certain issue areas[1] and three of the leads provided an overview of key outstanding issues (see Appendix I). He stated that the Triennial Review could move forward as one large rulemaking (like GLI) or it could be broken up. One new category is how we can work on NPDES permits to streamline the process, making it as pragmatic as possible. Mr. Method said that the agency left to its own would move separately on Mercury and E.Coli. He stated that the WQAG had done a lot of work on antidegradation and that we should build on that, that there were a whole block of implementation issues (i.e., what policies are we trying to effectuate), and for criteria there are some "no brainers" while others are complicated. The process could end up with four or five groups dealing with different issues.

[1] E.Coli – Mary Ellen Gray; Mercury – Jon Mangles; Criteria – Dave Kallander; Implementation – Lonnie Brumfield and John Elliott; Antidegradation/OSRW – Larry Wu and Denny Clark.

3. A question was asked whether there were any 316(a)&(b) issues involved. Staff responded that it was felt they may not require rulemaking. Another issue was raised as to the importance of collecting data on nutrients. A stakeholder suggested that the nutrient issue as particularly important to set priorities. (See Appendix II for comments from Denny Clark.)

4. Mr. Method asked the invited stakeholders to share their thoughts and comments on the upcoming process. Charlotte Read spoke to the need of independent note takers, technical assistance and to set time limits. Tom Anderson asked if prior advisory group documents would be available on the internet. He stated that the requirements of SEA 431 should be kept in mind. Glen Pratt asked, "how clean is clean?" and "what is 'background'?" He also spoke to the need for a holistic approach between media areas of IDEM (e.g., removing mercury from the water could cause it to be released into the air). Bill Beranek reminded the group that the limited IDEM staff resources would not allow all policies to be addressed at once. He stated that: 1) limited stakeholder resources would require the use of "triage" to prioritize policies; 2) that some policies must be done together; 3) there was a need to keep practical and technical corrections separate from "road blocks," and, 4) that when considering opportunities for improved water quality or improved public participation that we should see where we could get "the most bang for the buck".

   Ted Rhinehart stated that from the municipal level a consensus among stakeholders on the priority of topics would "help us see better." Some issues were "what is holding up permits?" and, "what is holding up good projects?" He stressed the importance of understanding "why" priorities had been set. He also added the work could be divided among smaller committees which could develop white papers. Art Umble voiced three concerns over the process: 1) is there a role for EP Region 5 staff?, 2) at the onset, the agency needs to define the role of science. Too often the agency jumps to public policy considerations only to realize that it did not have enough data. 3) Some obstacles are legal questions of which the group was unaware. He said lawyers should be included in the workgroup process. Micheala Kendall voiced support for earlier statements (as did many subsequent speakers) and reminded the group of the need to keep things written down. Marvin Ellis stated it was important to keep the role of science in rulewriting. He added there were three things to help the process: categorization, prioritization and communication.

   Dave Wagner stated that when the rule gets to the Water Pollution Control Board that the Board wants assurances that people had been heard. He suggested this could be accomplished by keeping written minutes and other documentation. He added the importance to establish timelines. Bowden Quinn stated that good notes out of the process would be good. He added that it would be good if the group could be able to review actual draft rule language. He echoed the importance that the WPCB know the issues and what had been discussed. Mark Thornburg stated that as a newcomer to the process that it would be helpful to

know past discussions. He supported the importance of sound science and the need to clearly articulate goals. Mike Biase thanked the agency for having this kind of meeting. He asked if it were possible to keep the rule from becoming so technical that the average citizen cannot understand it.

Ron Turco observed that rules do not operate in a vacuum and that there might be a problem, therefore, working in small groups. Patrick Bennett added that when the process reaches a critical juncture, the position of the agency needs to be known. Tim Lohner stated that 316(b) is an area of huge federal activity (e.g., selenium and arsenic) and that we need to make sure we do not come out with anything prematurely. Do not let this agenda drive another. He added that too many workgroups will result in spreading resources too thin. Vince Griffin said sound science is critical. There is also a need to set priorities (as some areas are easy and others difficult) and to set timeframes. He felt that clear language in the rule was important and that good notes would be a good idea.

Tonya Galbraith stated mistakes of the past were not setting priorities and not communicating. Prioritizing is vital. She said it is good to pick off things you can. Kari Evans commented that everyone knows the difficulties; the hard thing is to learn from the past and move forward. The process needs to first be inclusive: focused on the workgroup process bringing together legal, technical and policy folks. Second, it is important for IDEM to identify NPDES road blocks, issues that will get us close to litigation, and, which of these issues that can be addressed. Neil Parke said a lot of things had fallen off the table since 1999. He discussed the importance of prioritization and suggested a timetable whereby a list of no brainers would be developed in 30 days, technical people would be given 90 days for input, first notice would be within 150 days, second notice within 210 days, preliminary adoption within 270 days and final adoption within 330 days. He suggested that no brainers could include cyanide and dissolved metals.

Tom Neltner suggested avoiding the massive rulemaking. Doing so would never get to the details folks need to feel comfortable. He added he was in favor of prioritization, the need for an independent note taker, the need to clearly define legal constraints, the need to know federal rules up front and for the group to pre-review the agency's response to comments before they go out. He was in favor of small groups to shepherd the rules through the process and said the workgroups need consistent participation. In any rule, there are "parking lot" issues. Things we'll get back to. He said there was a need to track and document them and give them to the board.

5. After a break, Mr. Method stated three process goals: 1) identify issues and prioritize them; 2) meet periodically to receive reports and discuss things out; and, 3) decide what problems to solve and what approach to take. He said groups could establish their own timelines and have minute takers. He acknowledged the interest of the group to gain as much agreement as possible on the issues. Mr.

Griffin said that staff listed a number of issues and asked when they would be available. Mr. Method said they would be circulated soon, suggesting that it be done before getting back together. Mr. Pratt asked about addressing "low hanging fruit" issues. Mr. Method responded that one person's no brainer was not another's. He added that that may be the value of this group. Mr. Wagner observed that one group was missing – the general public. He suggested having public meetings/public hearings in four, five or six corners of the state. Ms. Read asked if there was any way to get the Department of Health and state universities involved to obtain independent scientific input. Dr. Beranek stressed the need to write up clear paragraphs of what the group needed. He added that universities were not use to this type of process and a clear statement would help them decide if they wanted to participate. Professor Turco stated that university faculty do not necessarily think about policy. There would be a need to make questions specific. Dr. Beranek said the group needed to meet once or twice a year just to discuss the process. Mr. Method observed the group would then basically act as a steering group. He suggested meeting in August to identify issues, place them in specific bins and prioritize them. Ms. Read asked how Environmental Justice concerns would relate to the process. Mr. Method responded that it would relate to effective public participation. Mr. Rheinhart suggested listing issues and providing a short summary of why the issue is important.

6. Before the next meeting Mr. Method stated the agency would: 1) send out a summary of the 6/24/02 meeting; 2) present candidate issues for group consideration, plus suggestions as how to organize the issues; and, 3) if the consensus was to set up smaller groups, what charge they should be given.

   The next meeting will be Thursday, August, 15, 2002, from 9:00am to Noon, at the Indiana Department of Environmental Management, 2525 North Shadeland Avenue, Conference Room C, Indianapolis, Indiana.

APPENDIX I – PARTIAL LISTING OF KEY OUTSTANDING ISSUES

<u>Antidegradation (Denny Clark)</u>

1. Federally required Tiers (Tier I, Tier II and Tier III) and what types of waters/requirements were placed in each Tier.

2. Need for another Tier (Tier 2.9 ?) in which to place Outstanding State Resource Waters (Outstanding National Resource Waters go into Tier III).

3. Need to develop implementation procedures for how we would apply the antidegradation policy to various waters.

4. The Water Quality Advisory Group (WAG) had done considerable work on implementing antidegradation for Tier II waters and we should be utilizing that information in the discussions.

5. Since SEA 431 we now have additional guidance on how to deal with antidegradation for Tier II waters and Outstanding State Resource Waters and how to propose waters for this classification. Although this issue was very contentious in previous triennial review, it may be easier to develop this time with the new guidance.

Criteria Issues (Dave Kallander)

1. Narrative Criteria
   A. General narrative
   B. Biological narrative
   C. Sediment narrative

2. Aquatic life, human health and wildlife numeric criteria and values

3. Methodologies for calculating the aquatic life, human health and wildlife criteria and values
   A. Aquatic life methodologies
   B. Human health methodologies (new national human health methodology)
   C. Wildlife methodology

4. Site specific modifications to criteria and values

5. Dissolved metals

6. Free cyanide

7. Bioaccumulative Chemicals of Concern (BCCs)

8. 1999 Ammonia Criteria

9. Additivity

Permitting Issues (Lonnie Brumfield)

1. Antidegradation Implementation
   A. Conducting Technology Reviews
   B. Economic and Social Review
   C. OSRW Antidegradation in Great Lakes
   D. OSRW Antidegradation in non-Great Lakes

2. Reasonable Potential to Exceed Water Quality Standards (RPE)
   A. Development of Tier II values – what pollutants to consider
   B. Procedure for WETT
   C. Special Provisions – Intake pollutants, once-through NCCW
   D. Statistical Procedure for Toxic Pollutants

3. Wasteload Allocations (WLAs)
   A. Additivity
   B. Alternate Discharge Flow
   C. Alternate Mixing Zones
   D. Ambient Pollutants in Receiving Stream
   E. Metal Translators
   F. Mixing Zones
   G. Stream Design Flows

4. Water Quality-Based Effluent Limitations (WQBELs)
   A. Mass and Concentration Limitations
   B. Net Limitations
   C. Pollutant Minimization Programs
   D. Translation of WLAs into WQBELs
   E. WQBELs < Limit of Quantitation (LOQ)
   F. Wet Weather Mass Limits

5. Other Issues
   A. Controlled Discharges (Waste Stabilization Lagoons)
   B. Implementing Storm Water Rules into NPDES Permits
   C. Lake and Sinkhole Dischargers
   D. LOQ Permitting Issues/Averaging LOQ Values
   E. Small Sanitary Discharger (raising from 50,000 gpd to 1 mgd)
   F. Update Numerous Minor Rule Provisions (Definitions, Permit Application Requirements, etc.)
   G. Water Treatment Additives

APPENDIX II – NUTRIENT CRITERIA

Denny Clark

A question was asked about how IDEM was going to deal with the nutrient criteria issues since EPA has required states to develop and promulgate nutrient criteria.

The Clean Water Action Plan required states to develop and promulgate criteria pertaining to total phosphorus, total nitrogen, turbidity, and chlorophyll a into their water quality standards by 2004. In this fashion the EPA developed their proposed criteria for these parameters was quite different than the way EPA had developed and proposed other criteria such as the toxics criteria. Most states, including all those in Region 5, had

expressed serious concerns to EPA about the criteria themselves, the way they were developed (percentiles) and the time frame for promulgation.

Based on these concerns, EPA issued additional guidance that encouraged states to develop Nutrient Criteria Development Plans that discussed in some detail what the state was planning to do and the timelines for accomplishing these tasks. The guidance also offered some ideas of what a plan should contain. If states developed and submitted a plan that EPA would approve, then the state would be held to the time lines and activities outlined in their plan and not the Clean Water Action Plan timeframe of 2004 for criteria development. EPA also agreed that these plans might need to be modified as the state progresses toward development of these criteria.

Indiana has submitted a draft plan to EPA and has received comments back from EPA on that plan. Indiana is working to respond to comments on the plan. Currently, Indiana's time line as outlined in the plan would have Indiana proposing nutrient criteria in the 2005-2006 time frame.