Summary
Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Indianapolis, Indiana
Wednesday, August 8, 2018

1. CALL TO ORDER
Chair Beverly Gard called the meeting to order at 1:30 p.m. A quorum was present.

Members present: Commissioner Bruno Pigott; Dr. Joanne Alexandrovich; Chris Horn; William Etzler; Dr. Ted Niemiec; Devin Hillsdon-Smith; Ken Rulon; Angelique Collier; Karen Valiquette, Chris Smith (for Cameron Clark) and Jeffrey Cummins.

2. APPROVAL OF MEETING SUMMARY
Chair Gard called for approval of the April 11, 2018, meeting summary, which was approved as presented.

3. REPORTS
Commissioner’s Report
Commissioner Pigott announced that Dick Zeiler, Office of Air Quality (OAQ) and Mary Hollingsworth, Drinking Water, Office of Water Quality (OWQ) would be retiring. He said Matthew Prater, OWQ, is replacing Ms. Hollingsworth.

Commissioner Pigott spoke about concerned citizens of Franklin, Indiana, regarding a cancer cluster of several children that may have been caused by environmental factors. Over the past several years IDEM and the Department of Health have met with the community at public forums to discuss concerns raised about the cancer cluster, as well as the environmental concerns. IDEM has been working at a former contaminated tomato factory where contaminated material was removed, and IDEM has been monitoring that site. U.S. EPA has been monitoring and working at a site called the Amphenol site, which was also a contamination source. The Department of Health’s evaluation indicated there is not a cancer cluster in Franklin, Indiana. Franklin tested some schools on the east side and found no concerning contaminants. He said IDEM was evaluating other potential concerns in the community.

The Commissioner spoke about IDEM accelerating the issuance of inspection reports and provided an update of work being done by the Volkswagen Committee. He explained the $41 million Volkswagen settlement process, and that the Commission led by Senator Gard has held five public meetings throughout the state for feedback regarding the beneficial mitigation program (BMP). A draft of the plan has been sent to members of the board, and they provided comments to IDEM. The agency is in the process of revising the plan and will be posting the draft BMP on IDEM’s website for people to submit comments within a 30-day period. He said the board would then decide if further discussion is needed to finalize the plan to provide different project ideas for the State of Indiana.

Chair Gard asked Commissioner Pigott about the status of algae blooms in Indiana. He said IDEM tests various reservoirs and drinking water sources, and he hasn’t heard any concerns from staff that algae blooms were at a level to cause closures or health concerns. He said that algae blooms can come and go and that samples are indicative of the day of testing.
Rules Update
Ms. Chris Pedersen, Section Chief, Rules Development Branch (RDB), Office of Legal Counsel (OLC), spoke on the rulemakings that would come before the next Environmental Rules Board (ERB) meeting, possibly November 14, 2018, which will be held in Conference Center Room A. She explained IDEM’s Air Permit Legal Notice Rule by providing additional information and clarification concerning the rulemaking. IDEM is proposing to change the regular method of public noticing for new source review and Title V permit actions from publication in a local newspaper to electronic posting on IDEM’s website.

Dr. Alexandrovich asked about electronic access. Matt Stuckey, Deputy Assistant Commissioner, Office of Air Quality (OAQ), explained several processes IDEM has available.

4. RULEMAKING ACTIONS
Clark and Floyd Counties 2015 Ozone Designation Emergency Rule
Chair Gard opened the discussion for adoption of the Clark and Floyd Counties 2015 Ozone Designation Emergency Rule. Ms. Krystal Hackney, Rule Writer, RDB, OLC, spoke for the agency and said this rule temporarily revises Clark County and Floyd County to nonattainment for the 2015 eight-hour ozone standard until the regular rule is completed. On June 4, 2018, U.S. EPA published a final rule to establish air quality designations for the 2015 eight-hour ozone standard. IDEM is proposing the temporary nonattainment designations to Clark and Floyd Counties so that affected sources in that area can be permitted under the appropriate state permitting rule.

There were no questions and no board discussion. There were no commenters.

Mr. Horn moved to adopt the emergency rule and Mr. Rulon seconded. The emergency rule was adopted unanimously.

LSA #17-563, Cross Connection Reference Updates
Chair Gard opened the discussion for final adoption of amendments to 327 IAC 8, Cross Connection Reference Updates. Ms. MaryAnn Stevens, Rule Writer, RDB, OLC, explained how unprotected cross connection and backflow contamination could pose a public health risk and cause a public water system’s failure to maintain the federal Safe Drinking Water Act standards. IDEM believes the proposed rule makes the necessary updates to the information concerning where to find reference documents for cross connection.

There were no commenters. Mr. Cummins moved to final adopt the rule and Mr. Hillsdon-Smith seconded. With a roll call vote, the rule was final adopted unanimously.

LSA #17-395, Air Permit Legal Notices
Chair Gard opened the discussion for preliminary adoption of amendments to 326 IAC 2, Air Permit Legal Notices. Chris Pedersen spoke for the agency and said on October 18, 2016, U.S. EPA published a final rule in the Federal Register that revised the requirement to provide public notice of certain draft air permits under the New Source Review (NSR) and the Title V permit programs through newspaper publication. The final rule allows permitting authorities implementing a U.S. EPA approved program, including Indiana, to change the consistent method of providing public notice for publication in a local newspaper to electronic publication on the agency website. Indiana implements a
U.S. EPA approved program that meets the federal requirements of 40 CFR 51 and 40 CFR 70. Since Indiana has an approved program, the state has the option of adopting either electronic notice or newspaper publication as the primary method of public notice. The federal rule states that whichever method the permitting authority chooses to adopt must be indicated to the public as the consistent noticing method used, and must furnish reasonable access to other materials that support the permit decision, including the draft permit. Ms. Pedersen noted various reasons why newspaper readership has declined and said the internet is progressively becoming the method the public uses to obtain information.

Commenter Stephen Key, Executive Director and General Counsel, Hoosier State Press Association, representing the state’s paid circulation newspapers, spoke about public notice advertising and the history of the newspaper’s role in providing public notices. He noted some basic elements to public noticing: independence, ability to archive, accessibility, and verification. He also spoke of a survey of the public’s attitude on public notice advertising in Indiana done by American Opinion Research, Princeton, New Jersey. He distributed a hand-out with comparisons of IDEM web pages containing notices to Indiana newspaper readership.

Mr. Key requested the Board reject the proposal to eliminate the required publication of air quality permit applications in Indiana newspapers.

Chair Gard asked Mr. Key what percentage of his stack of public comments are form comments.

Mr. Key replied said he wasn’t sure—that the comments he had were all individual comments, not associated with anything as far as form.

Mr. Ettler said in Mr. Key’s handout he noted that by law newspapers are required to post public notices on the web site. He said he subscribes electronically to a newspaper consortium, and he said he doesn’t see any reference to public notices anywhere on their web site.

Mr. Cummins said he was sympathetic to the comments about Internet access. He said he would be glad to discuss the issue more at the November 14, 2018 meeting.

Mr. Hillsdon-Smith asked if the information in a newspaper notice is the same as what is sent to a journalist who is on the automatic mailing list and could publish the exact information.

Mr. Stuckey replied in the affirmative. He said that IDEM will be doing some transitional outreach to explain that future public notices will no longer be published in the newspaper, but newspapers can request to receive this information.

Ms. Valiquett remarked that in this rule it appears that the notification is either by newspaper or on-line and asked if there was data to confirm which process would reach the most people.

Mr. Stuckey replied that IDEM has been providing notification electronically since 1999, and the difference would be just to make the primary source to be IDEM’s on-line publication.

The hearing was concluded.
Mr. Cummins moved to preliminarily adopt the rule, and Dr. Alexandrovich seconded. By a voice vote, the rule was preliminarily adopted 10 – 1.

**LSA #18-169 and LSA #18-172, IC 13-14-9.5-1.1 Hearing on Non-Expiring Rules**

Chair Gard opened the hearing on rules that do not expire under IC 13-14-9.5-1.1. The non-expiring rules are not subject to the sunset rule provisions under IC 13-14-9.5. Chair Gard explained how the non-expiring rules are exempt from expiration and are effective for seven years. She discussed how these rules are required every seven years to be public noticed for comments before coming to the board. This year a notice for each affected rule of the Indiana Administrative Code was limited to Titles 327 and 326+. There were no written comments received for either of the rules listed in the notices. She called for public commenters and there were none. The hearing was concluded.

Chair Gard explained to board members how the Board must determine whether any of the listed rules needed to be reviewed under the regular rulemaking process.

Chair Gard called for a motion for no further action on the rules. Mr. Smith made a motion to take no further action and Mr. Cummins seconded. By a voice vote, the board decided to take no further action on the rules.

5. **OPEN FORUM**
   There were no questions for the Open Forum.

6. **ADJOURNMENT**
   The next meeting is tentatively scheduled for 1:30 p.m. on November 14, 2018, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 2:58 p.m.

   [Signature]

   **CHAIRPERSON**

The summary is derived from Rules Development Branch staff members’ notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management and will be made available on the IDEM rules website. To view approved summaries, you may go online to [http://www.in.gov/idem/legal/2355.htm](http://www.in.gov/idem/legal/2355.htm).