SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 9, 2018, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 2-1.1-6, 326 IAC 2-7-13, 326 IAC 2-7-17, 326 IAC 2-8-13, 326 IAC 2-8-18, and 326 IAC 2-12-1. Comments were made by the following parties:

Steve Key, Hoosier State Press Association (HSPA)

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

Comment: The commenter discussed the importance of public notices to the community. The concept of public notice advertising is that it is information that is so important that the Indiana legislature has said they want government entities to put this information in the hands of the public, who may otherwise never know that these permits and processes exist. The information in permits that asks for permission to pollute is very important to the community, and they need to be able to make balanced and informed decisions. They need to consider the business that’s involved, the new jobs that may be involved, and the economic health of the community tied to those businesses, and be able to balance these factors with the impact that these additional pollutants may have on their health.

The commenter talked about the benefits of printing public notices in newspapers, including independence in publishing the notice exactly as it was given, the ability to find archived information, the importance of accessibility of newspapers to all segments of our society, and the fact that newspaper articles containing public information can easily be found and verified, similar to accessing newspaper archives.

The commenter asserted that a busy family with children does not have the time to check IDEM’s webpage every day to look for actions that might directly affect them. It is the public’s desire and expectation to have public notices in a newspaper, as shown by the results of the comment period. This outpouring of public sentiment against this rule matches what has been found state by state with surveys done for years now.

American Opinion Research did a survey of the public's attitude on public notice advertising in Indiana last summer. Sixty percent of adult Hoosiers say that they read public notices in the newspaper. That doesn't mean they read every notice every day, but that's where they look for public notices and where they expect them to be. Sixty-three percent of Hoosiers said they believe government agencies should publish public notices in newspapers, even though the question stated that this may cost the government unit thousands of dollars to do so. They were also asked what the impact would be if public notices were moved from newspapers to a government website, and the survey found that posting notices only to government websites would result in a 60 percent decline in the readership of those notices.
The commenter mentioned the issue of the effectiveness of posting notices to IDEM’s website. IDEM is telling the public that it's more effective to be on the Internet, but HSPA would argue that's not the case. IDEM also pointed out that newspaper readership is not as strong as it was a decade ago, and HSPA doesn’t deny this. However, the survey still found that 2.9 million adult Hoosiers read at least one printed newspaper a week. And if you add in those who read newspapers on-line, that number goes up to 3.6 million out of five million adult Hoosiers. It’s still a great way to get information to the public that is important for them to know. The internet is a great way to find information that you’re looking for, but public notice is information that the public doesn't know to look for. They don't know that their local business has applied for a permit, so they're not going to necessarily be attuned to that or be thinking about going to look for it on that website.

People are reading the newspaper because they want to know about what's happening in their community, and the beauty is that the public notices are right there in front of them. Along with local business advertising, the information is right there for them to be able to see and maybe stumble upon that public notice that they didn't have any idea was going to be in there, or they hear about it from their neighbor who saw the notice in the paper.

The commenter discussed the number of people that read newspapers compared to the number of people that visit IDEM’s website, to show that significantly more people read newspapers in Indiana than visit IDEM’s website. The internet is a way to hide things in plain sight.

IDEM originally cited a savings of $17,000 before they factored in the number of responses they got. It has now increased to $59,000, almost $60,000, out of an air permit program budget of $12.8 million. HSPA would argue that, based on the survey done by American Opinion Research on the response that came from two comment periods, five million adult Hoosiers would not object to spending basically one penny of their tax dollars to the state to inform them effectively of the actions of these air permit qualities.

HSPA thinks that the biggest problem for the IDEM staff are service issues with newspapers, and newspapers are made up of humans that can make mistakes, and that can be very frustrating. However, the HSPA stands ready and willing to work with IDEM to help resolve those service issues. We have had those complaints come up from the State Alcohol and Tobacco Commission, and now have an arrangement with them for a fee per notice. We do all of the work involved for them in terms of placing it, collecting the tear sheets, and arguing with them when they want to try to put a credit hold because the payment is slow from the state. We can do the same thing for IDEM. This could greatly reduce the $38,000 in staff time and effort, because we have already done it with the Alcohol and Tobacco Commission. We have also taken over and helped the Attorney General with the publication of the unclaimed property list, so we have a track history. We can take care of the service issues if that's really what's driving this change.

HSPA respectfully requests that the Environmental Rules Board reject this proposal to eliminate the required publication of air quality permit applications in Indiana newspapers, based on public sentiment, common logic, basic math, and common sense.

Response: In this rulemaking, IDEM proposes to change the consistent method of public noticing for air permit actions from publication in a local newspaper to electronic posting on IDEM’s website. This meets IDEM’s noticing requirement for an approved permitting authority,
is the method that is available to the most people, and provides the most transparency. IDEM has a responsibility to keep pace with communication trends in order to continue providing the best service to the public and has determined that electronic publication of notices is at least as effective, and in many cases more effective, in providing notice to the public as compared to newspaper publication.

The commenter asserted that searching IDEM's webpage for pertinent notices would take too much time and effort for the average family. However, IDEM’s website provides a direct link to the public notices on the website. These notices can be found at http://www.in.gov/idem/5474.htm. Streamlining the air permit notification process by providing direct links to air permit documents on IDEM’s webpage, as well as providing the option to receive notice by postal service or electronic mail through IDEM’s Office of Air Quality Permits Interested Parties list, makes air permitting information available to anyone interested in obtaining it in a timely manner. Additionally, IDEM's air permitting program has a searchable online database for the public to use that links directly to the public notices and is found at http://www.in.gov/ai/appfiles/idem-caats/. Public notices posted on IDEM's webpage can be accessed for the duration of the public comment period, as opposed to only one day in a newspaper ad.

Newspapers or a website act as a vehicle for publishing notices prepared and provided by the permitting authority. As newspaper readership declines and internet usage becomes more widespread, using agency website publication to disburse public notices serves the same purpose and works more efficiently than newspapers. Additionally, nothing in this rule prohibits newspapers from publishing articles of interest to their readers based on any of IDEM’s listed permit actions on the website, so the ability of newspapers to provide third-party information to the public remains unchanged.

IDEM has used both newspaper notices and electronic notices on the agency website concurrently for air permit actions since 1999 to request comment on draft air permits. IDEM does not track the number of comments received, but few, if any, comments are usually received, and there is no way to determine how an individual learned about the permit. Individuals can choose to access information via computer just as they can choose to subscribe to a newspaper. In either case, the individual must proactively seek to receive information. IDEM provides an alternative for individuals that prefer to receive air permit action information in printed form simply by letting IDEM know they wish to receive it.

IDEM appreciates HSPA’s offer to attempt to resolve service issues. Discussions with specific newspapers to address the problem of timely placement of public notices have not been successful and it would not fully resolve all of the concerns associated with publishing public notices in newspapers. However, IDEM has begun working with HSPA to obtain contact information for newspapers in order to place them on the mailing list to receive notification of air permitting actions in their community. With this information sent directly to them at the time a public notice is posted on the website, local newspapers can determine if the action is of interest to their readers and either publish the notice information or prepare an article on the subject for more in depth information.

The purpose of this rulemaking is to change the consistent method of offering the opportunity for public participation in the processing of air permits from publication in a newspaper available to subscribers to posting on the agency website available to anyone via computer access or by
requesting notices of interest by mail or electronic mail. This rulemaking does not preclude IDEM from publishing public notices in newspapers, nor does it preclude news agencies from reporting on particular postings they feel would be important or pertinent to their readers.