Summary
Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Indianapolis, Indiana
Wednesday, November 14, 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; R. T. Green; Ken Rulon; Angelique Collier; Karen Valiquette, Chris Smith (for Cameron Clark); Mike Mettler; Paul Gilson and Calvin Davidson.

2. APPROVAL OF MEETING SUMMARY
Chair Gard called for approval of the August 8, 2018, meeting summary, which was approved after an error was brought to the Board’s attention on page 4 under Hearing on Non-Expiring Rules. The error of Title 327 and Title 327 will be changed to Title 327 and Title 326. Chair Gard welcomed Mr. Paul Gilson, Eli Lilly & Company, as a new board member representing Manufacturing.

3. REPORTS
   Commissioner’s Report
Commissioner Pigott announced that Amy Smith, Deputy Assistant Commissioner, Office of Land Quality (OLQ) (Underground Storage Tanks, Excess Liability Trust Fund), will be leaving December 7, 2018. He spoke about the November 13, 2018 public meeting at the Natural Prairie Dairy in northern Indiana regarding a Confined Feeding Operation (CFO) permit. He also spoke about IDEM working in Franklin, Indiana, regarding re-testing homes concerning the cancer clusters, which were deemed clean by the Indiana Department of Health. He said IDEM will continue working there on a regular basis. He also spoke about the Indiana Department of Correction training prison inmates in software development (women) and welding (men) who are scheduled to be released in the near future. He said IDEM has been working with the Department of Correction to see if inmates could be trained to become wastewater or drinking water operators. He spoke about the press release for the Volkswagen Trust Plan to spend funds.

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 February 13, 2019, which will be held in Conference Center Room A. She commented that the Air Permitting report was provided in the board members’ packets.

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. Rulon moved to adopt the emergency rule and Dr. Alexandrovich seconded. The emergency rule was adopted unanimously.

**UST Compliance Date Corrections Emergency Rule**
Chair Gard opened the discussion for adoption of the UST (Underground Storage Tank) Compliance Date Corrections Emergency Rule. Mr. Dan Watts, Rule Writer, RDB, OLC, spoke for the agency and said this emergency rule proposes temporary amendments in 329 IAC 9 to the compliance dates for underground storage tank requirements.

There were no commenters. Mr. Davidson moved to adopt the emergency rule and Mr. Horn seconded. With a voice vote, the emergency rule was adopted unanimously.

**LSA #18-281, UST Compliance Date Corrections**
Chair Gard opened the discussion for adoption of amendments to 329 IAC 9-1-1 and 329 IAC 9-8-1, UST Compliance Date Corrections. Mr. Dan Watts spoke for the agency and said IDEM is proposing amendments to 329 IAC 9 that extend the compliance deadlines for underground storage tank requirements that were adopted earlier this year in LSA #16-204. He said this rule is related to the UST emergency rule that is being presented to this board today and will permanently adopt the amendments in the emergency rule, in addition to other rule changes. He said the rulemaking clarifies the applicability of the financial assurance requirements and removes outdated compliance dates for financial assurance requirements. He said since the initial notice of rulemaking, IDEM is proposing a change to the draft rule at 329 IAC 9-1-1(d)(10), the incorporated requirements at 40 CFR 280, Subpart J, concerning UST operator training, are excluded from the extended compliance dates.

Dr. Niemiec asked for a summary of examples of those portions which have the later compliance dates of 2024 and 2025 for sections adopted in the federal rules. Mr. Watts asked Doug Louks, Deputy Assistant Commissioner, Office of Land Quality, if he could think in particular of anything related to those compliance dates. Mr. Louks replied that some testing that’s going to be deferred with the UST systems is going to have some of that as well, but the big one is going to be the hydrostatic sump testing. Ms. Collier asked if the October 13, 2018, training deadline would contradict any of the communication that was sent out previously to the regulated entities. Mr. Louks said in regard to operator training, it was already in the rule that came in which IDEM amended in 2009, to bring in the operator training requirements in the federal Energy Policy Act of 2005. He said the only difference is once these are effective, IDEM is going to change what’s in the actual operator training, but the requirement continues throughout the entire time.

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

**LSA #09-363, Asbestos Management Revisions**
Chair Gard opened the hearing on amendments to 326 IAC 14-10 and 326 IAC 18, Asbestos Management Revisions. Ms. Chris Pedersen spoke for the agency and said this rulemaking revises provisions in the Emission Standards for Asbestos Demolition and Removal Operations, 326 IAC 14-
Commenter Curt Publow, President, Hoosier Chapter of the Solid Waste Association of North America (SWANA), spoke in support of the proposed change in the legal notice requirements. He made some suggestions on how the changes are implemented in the on-line resources that IDEM has available. He noted that it’s not always clear what has changed. He said the notification leads to a page that lists many notices and it’s up to the individual to determine if it is a new public notice of interest. It would be helpful if it could be noted as a new entry.

Commenter Tim Banister, Facilities Chair, Indiana Chapter, National Waste and Recycling Association (NWRA), said they encourage and approve on-line legal notices. He suggested that it be made clear when changes are made. Chris Smith asked Mr. Banister how he would like to see the information organized. Mr. Banister replied that there could be a variety of tools used.

Commenter Stephen Key, Executive Director and General Counsel, Hoosier Press Association, said they are in opposition to the IDEM proposal. He discussed the number of comments received by IDEM in the two comment periods (600) who were opposed to this rule and four comments in favor of the rule. He said that the Hoosier Press Association is ready to work with IDEM to help alleviate the cost burden on IDEM and described the method involved of newspaper notification remaining in use and gave examples of their assistance with other state organizations/agencies.

Mr. Gilson asked Mr. Key about his view on e-mail notifications to newspapers. Mr. Key said it helps the newspaper and news gathering. He said public notice is designed to give notice to the public. E-mails to the newspaper don’t necessarily make that connection, and said that’s why the legislature has had notices required under the Open Door Law, and they have notices that are required under the Public Notice Advertising Law. Calvin Davidson asked Mr. Key what he is referring to about newspaper readership—hard copy or on-line and hard copy. Mr. Key replied just hard copy. If on-line readership is added, it goes up to 3.6 million. He said it’s a far cry from 2,009 total unique visitors over the entire year.

Chair Gard asked about the origin of the 600 comments. Mr. Key replied it is a total for the 1st comment period and the 2nd comment period. She then asked if most of those who wanted to keep newspaper notices were from the newspaper industry. Mr. Key replied no. He said the Public Notice Resource Center placed a comment, Hoosier State Press Association put in comments on both comment periods. He said there may have been one or two other newspaper publishers that commented. He said two state legislators put comments in and both were opposed to the rule. In summary, the overwhelming number of comments were coming from citizens.

Chair Gard concluded the hearing. Dr. Niemie suggested that the person looking on the website for the documents select a date range and choose whether they want it sorted alphabetically, by date, or county.

Chair Gard asked if it was feasible. Commissioner Pigott responded that he would check with IDEM’s technical people to explore it.

Chair Gard asked Nancy King to review how people get information from IDEM. Ms. King said they sign up to be notified. She said all of the information related to IDEM’s permit actions are on IDEM’s web site for people to come and look at any time they want, not just when these things occur. She reiterated that these notices are being sent to newspapers. Papers can publish them if they want to do so. To satisfy the federal requirement of having a certain time frame, which is 30 days, she said for the
10, and the Asbestos Licensing and Training Requirements in 326 IAC 18. She said the federal requirements are required for Indiana to continue to operate the asbestos training and licensing programs. Article 18 includes requirements for people to obtain the training and licensing needed to work with asbestos and also for approval of training course providers in Indiana. Ms. Pedersen said the First Notice of Comment Period was published June 3, 2009, in the Indiana Register. A Continuation of Notice of First Comment period was published on October 4, 2017. She said some of the reasons for the delay of presentation to the board include lengthy internal discussions, turnover of rule writer staff, asbestos program staff, and legal staff, and also other rules of a higher priority taking precedence.

Ms. Pedersen stated that IDEM sent information electronically to over 130 asbestos abatement companies, consultants, training course providers and other interested parties at the time of the two most recent written comment periods in 2017 and 2018 to inform them of comment opportunity and where to find notices with further information. She noted that the rule revisions in both articles are mainly administrative. She said IDEM has added the option to submit notifications and other information electronically. She explained substantive changes in 326 IAC 18 which included simplifying the training and licensing process, relaxed licensing requirements, and increased license renewal time for a person with an expired license.

Dr. Alexandrovich asked whether the definitions about electronic submissions would cover flash drives or thumb drives, which Ms. Pedersen replied in the affirmative. Dr. Alexandrovich asked if the term “electronic submission” could be clarified. Ms. Pedersen replied that it would be reviewed.

The hearing was concluded.

Mr. Davidson moved to preliminarily adopt the rule, and Mr. Rulon seconded. By a voice vote, the rule was preliminarily adopted.

**LSA #17-395, Air Permit Legal Notices**

Chair Gard opened the discussion for final adoption of amendments to 326 IAC 2, Air Permit Legal Notices. Ms. Keelyn Walsh, Rule Writer, RDB, OLC, 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 Title V permit programs through newspaper publication. The final rule allows permitting authorities implementing a U.S. EPA approved program to change the consistent method of providing public notice from 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. IDEM is also proposing to change the method of noticing to electronic notices posted on IDEM’s website for all other air permit actions that currently require newspaper notice by IDEM, for consistency across the programs. This will result in one location for all air permit notices that is available to the public. Converting to electronic notice will reduce the cost to IDEM associated with newspaper publications of approximately $59,600 per year. Electronic noticing should eliminate publishing delays and allow IDEM to communicate permitting and other affected actions to the public more quickly and efficiently.

Ken Rulon commented that the intention of the statute concerning the economic impact of the rule was on the state of Indiana and its citizens, and not on IDEM or the state budget.
next 6 months the newspaper notice will continue with the alert. She said IDEM’s website search functions could be improved.

Mr. Davidson asked how IDEM will inform readers that there is a new place to find that public notice.

Commissioner Pigott explained for most people directly affected by an action, IDEM keeps a list of interested parties and we can inform them when we send out a notice to them where they can find the information on IDEM’s web site. He stated that this is not a new procedure and that electronic notification has been used for a long time.

Dr. Alexandrovich said e-mails can be improved with more specific information i.e. county or company, than just saying the website has been updated.

Mr. Rulon asked if the web site crashes, how the time line would be affected. Commissioner Pigott said in those cases, IDEM can extend a time line.

Mr. Etzler moved to adopt IDEM’s suggested changes, and Dr. Alexandrovich seconded. With a voice vote, IDEM’s suggested changes were adopted. Mr. Smith moved to final adopt the rule as amended, and Mr. Green seconded. By a roll call vote, the rule was final adopted.

5. OPEN FORUM
Nancy King said the Underground Storage Tank (UST) Compliance Date Corrections, LSA #18-281, hearing wasn’t closed and needed to be re-opened to accept comments. There were none. The hearing was closed. Mr. Rulon moved to adopt the final rule and Chair Gard seconded. With a re-vote, the rule passed 13-0.

6. ADJOURNMENT
The next meeting is tentatively scheduled for 1:30 p.m. on February 13, 2019, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 2:51 p.m.

Beverly J. Gard
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.