

Summary
Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Indianapolis, Indiana
Wednesday, February 13, 2019

1. CALL TO ORDER

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

Members present: IDEM Chief of Staff Brian Rockensuess; Dr. Joanne Alexandrovich; Chris Horn; William Etzler; Dr. Ted Niemiec; R. T. Green; Ken Rulon; Cameron Clark; Jeffrey Cummins, and Calvin Davidson.

2. APPROVAL OF MEETING SUMMARY

Chair Gard called for approval of the November 14, 2018, meeting summary, which was approved.

3. REPORTS

Commissioner's Report

Chief of Staff Rockensuess spoke about the bills presented at the 2019 Legislative session. In the next biennium IDEM will experience financial challenges with current staffing and level of activity. He provided information on the proposal on handling future fee increases through rulemaking instead of legislation. Other issues addressed include: changing the date for hazardous waste operation fees for more accurate reporting and fee assessment; requiring electronic submission of drinking water lab reports; eliminating the quarterly report for waste haulers; clarifying responsible party by restructuring the cap and how much can be spent per site for the Excess Liability Trust Fund (ELTF); and simplifying the solid waste management fee.

Chair Gard asked if the fee legislation would go through the normal rulemaking process. Mr. Rockensuess said there would be a cost of service study prepared by a third party with comparisons of other state charges that would be presented to the board for approval to begin the rulemaking process. She also asked if the fees would remain the same as they were passed in 1994 during this process. Mr. Rockensuess answered yes. Mr. Davidson asked about Indiana paying out more than other states under the ELTF program. Mr. Rockensuess gave examples where we are paying more.

Mr. Rulon asked if the legislature was receptive to the bills. Mr. Rockensuess replied in the affirmative. Mr. Rulon asked if there were any more developments in the Franklin, Indiana, testing. Mr. Rockensuess replied that IDEM is committed to air testing at the homes that were tested by another environmental consultant. Those homes have shown very low limit levels for TCE and PCE. He said IDEM has tested other sites including Hurricane Creek, and they have shown low limits.

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 meeting, possibly May 8, 2019, which will be held in Conference Center Room A. She explained the postponement of the preliminary adoption of the originally-scheduled Hazardous Waste Updates rule until the next Environmental Rules Board Meeting, May 8, 2019.

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 326 IAC 1-4-11 and 326 IAC 1-4-23 to designate Clark County and Floyd County to nonattainment for the 2015 8-hour ozone standard until the regular rulemaking is completed.

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

Dr. Alexandrovich moved to adopt the emergency rule and Mr. Cummins 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 UST requirements because some of the compliance dates occur before the anticipated effective date of April 2019 for LSA #18-281, a regular rulemaking adopted at the November 14, 2018 ERB meeting. This emergency rule will allow the compliance dates to be effective and enforceable as soon as possible instead of a few months from now. There were no commenters.

Mr. Rulon moved to adopt the emergency rule and Mr. Cummins seconded. With a voice vote, the emergency rule was adopted unanimously.

LSA #09-363, Asbestos Management Revisions

Chair Gard opened the hearing for final adoption 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 the requirements in 326 IAC 14-10 for the delegated asbestos program that applies to demolition and renovation activities and the asbestos licensing and training requirements in 326 IAC 18. The amendments in this rulemaking will clarify and update Indiana's existing asbestos management program rules, afford a modest cost savings for certain licensing functions, and ensure consistency within the program and with federal requirements.

There were no commenters. The hearing was concluded.

Mr. Davidson moved to adopt IDEM's suggested changes, and Mr. Cummins seconded. With a voice vote, IDEM's suggested changes were adopted. Mr. Rulon moved to final adopt the rule as amended, and Mr. Cummins seconded. By a roll call vote, the rule was final adopted.

LSA #16-309, Short Term Backup Units

Chair Gard opened the discussion for preliminary adoption of amendments to 326 IAC 2-1.1-3, Short Term Backup Units. Ms. Keelyn Walsh, Rule Writer, RDB, OLC, spoke for the agency and said this rulemaking adds an exemption that allows the operation of a short term backup unit for sources under certain circumstances without first requiring them to seek a permit modification. Updating 326 IAC 2-1.1-3 to allow for the operation of short term backup units would increase efficiency and save administrative costs for IDEM and the source.

Mr. Etzler asked why there is a 180-day limitation and why there is a 14-day limitation on a temporary unit. Mr. Phil Perry, Branch Chief, Compliance and Enforcement, Office of Air Quality (OAQ), replied the rule is designed to help people get out of permitting requirements. He said the 180 days is designed to allow an operation for a short period of time for emergency purposes. He said under the permitting provisions, all units operating or not, require permits. Chair Gard asked if this was a federal rule. Mr. Perry replied that it is not a direct federal rule but that the Clean Air Act requires permitting of the units. Mr. Rulon asked if an extra unit could be kept on the premises, would that be an additional permit. Mr. Perry explained that the short-term units are used for emergencies. Additional questions were asked.

There were no commenters. Mr. Cummins moved to preliminarily adopt the rule and Dr. Alexandrovich seconded. With a voice vote, the rule was preliminarily adopted unanimously.

LSA #18-271, Great Lakes Basin Combined Sewer Overflow Public Notification

Chair Gard opened the discussion for preliminary adoption of a new rule at 327 IAC 5-2.2, amendments to 327 IAC 5-2-3, 327 IAC 5-2-10, and 327 IAC 5-2.1-2, and repeal of 327 5-2.1-1, Great Lakes Basin Combined Sewer Overflow Public Notification. Ms. MaryAnn Stevens, Rule Writer, RDB, OLC, spoke for the agency and said U.S. EPA published a new final rule regarding public notification for combined sewer overflow in the Great Lakes Basin. The public notification requirements apply to NPDES permittees authorized to discharge combined sewer overflow to the Great Lakes Basin. This rulemaking proposes a new rule at 327 IAC 5-2.2 to incorporate 40 CFR 122.38 by reference. It also amends 327 IAC 5-2-3, 327 IAC 5-2-10, and amends one section and repeals another of 327 IAC 5-2-1, which is the existing state CSO public notification rule. The federal CSO public notification rule requires states which delegated NPDES programs to include the federal requirements in state rules, to implement the public notification program, and include the CSO public notification requirements in NPDES permits.

There was much board discussion, including IDEM speakers Ms. Martha Clark Mettler, Assistant Commissioner, Office of Water Quality (OWQ), Ms. Nancy King, General Counsel, Office of Legal Counsel (OLC), and Jason House, Technical Environmental Specialist, Permitting Branch, OWQ. Discussion topics included: authorized vs. unauthorized CSO discharges; public notification; when an emergency rule is needed; whether outflow reports can be on IDEM's website; CSO communities' requirements to notify the public; notification and the possibility of IDEM compiling the information. Ms. King said no comments were received in the second notice, indicating affected communities were informed by the permits branch about the rulemaking.

Commenter Bowden Quinn, State Director, Sierra Club Hoosier Chapter, spoke in support of this rule.

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

LSA #18-364, Portland Cement Monitoring

Chair Gard opened the discussion for preliminary adoption of amendments to 326 IAC 3-5-1, Portland Cement Monitoring. Ms. Keelyn Walsh, Rule Writer, RDB, OLC, spoke for the agency and said continuous monitoring requirements in 326 IAC 3-5 currently apply to Portland cement plants operating in Indiana. Under the existing state rule, Portland cement plants may choose to use either a continuous opacity monitoring system, known as COMS, or a continuous emission monitoring system for particulate matter, to monitor emissions from kilns and clinker coolers. In 2013, U.S. EPA revised the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Portland cement plants

to require a continuous parametric monitoring system known as CPMS. Revising the COMS requirement to allow for the use of a CPMS to be consistent with federal regulations will allow Portland cement plants to operate more efficiently and keep operating costs low by allowing sources to use existing equipment to monitor emissions and ensure compliance with emission regulations in the NESHAP.

There were no commenters.

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

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 May 8, 2019, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 2:30 p.m.



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>.