

Summary
Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Indianapolis, Indiana
Wednesday, May 8, 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; William Etzler; R. T. Green; Cameron Clark; Jeffrey Cummins, Calvin Davidson; Paul Gilson; Karen Valiquett; Angelique Collier; Mike Mettler; Mark Wasky.

2. APPROVAL OF MEETING SUMMARY

Chair Gard called for approval of the February 13, 2019, meeting summary, which was approved. She introduced new member, Mark Wasky, representing the Indiana Economic Development Corporation.

3. REPORTS

Commissioner's Report

Chief of Staff Rockensuess spoke about the bills presented at the 2019 Legislative session. House Enrolled Act 1278 passed. He explained a few technical corrections that were made in the omnibus part correcting a federal code citation. He said the other policy that was established is a 15-member Energy Task Force to study Indiana energy policy and sustainability.

Mr. Rockensuess said the other major piece of HEA 1278 was IDEM's fee portion of the bill. There will be a money shortage because the fees collected by IDEM are not enough to run its programs. The bill says the Board shall raise fees by 3.2 million dollars for land and water programs, and allows air to raise fees up to two million dollars. After the initial 5.2 million dollar increase, IDEM has to arrange for a third-party cost-of-service study. If the information is reasonable, the Board can instruct IDEM to start a rulemaking for an additional fee increase. Every fee increase after the initial 5.2 million dollars can only be for ten percent every five years. This new process will apply to air, land and water programs. Regarding the Office of Air Quality Title V fees, they can use their current process one more time. IDEM has 60 days to compile a report on air fees to be brought to the Board and open for public comment. The Board will then need to confirm the report by a majority vote. Upon confirmation, the Title V fees will be raised, the Title V portions will be billed at the new rate, and IDEM will need to start a rulemaking to amend sections in Title 326 to codify the new fee structure that was confirmed by the Board. OAQ is working on the packet to present to the Board, and it is hoped that the confirmation hearing will be held at the August 14 meeting. Mr. Rockensuess said effective July 1, the State Department of Health will be removed from the Board and a new representative from the construction industry will be added.

Ms. Collier asked if the Title V fees that are paid in 2020 based on 2019 emissions will be based on the current process. Mr. Rockensuess replied the current process is the packet brought to the board. Ms. Collier asked when the fees from OLQ and OWQ would be expected. Mr. Rockensuess answered that it would be a typical rulemaking, at least sixteen months to completion. Chair Gard asked when the Board will first see something. Ms. Nancy King answered that to go through the regular rulemaking process, and because the Board will be setting the fees for water and waste, those will be two separate

documents. First, they will have to go through the moratorium exception request process to get approval to start the rulemakings. IDEM is now developing the requests to send to the Governor's Office.

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 August 14, 2019, which will be held in Conference Center Room A.

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 eight-hour ozone standard until the regular rulemaking is completed.

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

Mr. Davidson moved to adopt the emergency rule and Mr. Mettler seconded. The emergency rule was adopted unanimously.

LSA #19-83, 2015 Ozone Designations

Chair Gard opened the discussion for final adoption of the 2015 Ozone Designations Rule. Ms. Krystal Hackney, Rule Writer, RDB, OLC, spoke for the agency and said this rule revises the designation status tables at 326 IAC 1-4 for all Indiana counties to be consistent with the Code of Federal Regulations at 40 CFR 81.315. Clark and Floyd counties and parts of Lake County were designated nonattainment. The rest of the state was designated attainment/unclassifiable. Adopting these designations into the state rule will allow permits to be issued in accordance with the federal designations and established permitting requirements. There were no commenters.

Mr. Cummins moved to final adopt the rule and Mr. Green seconded. By a roll call vote, the rule was final adopted.

LSA #16-309, Short Term Backup Units

Chair Gard opened the discussion for final 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.

IDEM responded via a memo to questions raised at the February board meeting regarding timeframes for operation and removal of short term backup units. IDEM specified that a unit may not be on site for more than 180 days and must be removed within fourteen days after the completion of repairs or maintenance. Ms. Walsh explained IDEM's time limitation requirements and said IDEM may still use its enforcement judgment if applicable. She said without this rulemaking, sources would not be able to operate as efficiently and would lose productivity and extra costs.

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

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

Chair Gard opened the discussion for final 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 federal public notification requirements apply to NPDES permittees authorized to discharge combined sewer overflow to the Great Lakes Basin. The federal CSO public notification rule requires states with 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 were no commenters.

Mr. Mettler asked how the public notifications are made. Ms. Stevens replied that each affected community was required in the rulemaking process to prepare and submit a public notification plan to the Office of Water Quality (OWQ), and the plan is reviewed and eventually approved by the staff. Mr. Jason House, Technical Environmental Specialist, Permitting Branch, OWQ, added that each individual community selected the process for providing public notifications to the public, public health organizations, and other public entities. Social media and the websites of the permittees are the most commonly chosen methods of providing public notification.

Mr. Davidson moved to final adopt the rule, and Mr. Cummins seconded. By a roll call vote, the rule was final adopted.

LSA #18-364, Portland Cement Monitoring

Chair Gard opened the discussion for final 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 current state rule, Portland cement plants may choose to use either a continuous opacity monitoring system, (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 (CPMS). Two sources in the state requested removal of the COMS requirement for Portland cement plants based on these revisions to the NESHAP at 40 CFR 63, Subpart LLL. 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 reduce operating costs by allowing sources to use existing equipment to monitor emissions and ensure compliance with the NESHAP. Updating the rules at 326 IAC 3-5 will not impose any additional costs for the regulated industry or IDEM.

There were no commenters.

Mr. Cummins moved to final adopt the rule, and Mr. Clark seconded. By a roll call vote, the rule was final adopted.

LSA #18-481 Hazardous Waste Updates

Chair Gard opened the discussion for preliminary adoption of amendments to 329 IAC 3.1. Dan Watts, Rule Writer, RDB, OLC, spoke for the agency and said this rulemaking updates the hazardous waste rules in Title 329 with the incorporation by reference of recently promulgated federal hazardous waste rules. Additionally, the rulemaking makes technical amendments and corrections to the rule language that are related to the updated requirements or are identified in the included sections.

This rulemaking was scheduled for preliminary adoption at the February board meeting. Before that meeting, IDEM was made aware that the rulemaking inadvertently readopted the definition of solid waste that included requirements that were vacated from the 2015 U.S. EPA final rule, which IDEM did not intend to do in this rulemaking. In response, IDEM delayed preliminary adoption to this board meeting to remove the 2017 CFR update and only incorporate the requirements in the Federal Register notices for the hazardous waste rules that IDEM originally proposed to adopt. IDEM is initiating a separate rulemaking to address the definition of solid waste requirements.

Ms. Malika Butler, representing the Indiana Manufacturers Association, said they recommend that IDEM consider the adoption of the updated 2018 revision of the Definition of Solid Waste Rule in the Title 40 of the CFR as a whole to ensure businesses and the State of Indiana have a consistent and clear definition of legitimate recycling of hazardous secondary materials.

Mr. Cummins moved to preliminarily adopt the rule, and Mr. Green 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 August 14, 2019, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 2:22 p.m.



VICE CHAIR

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>.