Summary Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Zoom Meeting
Indianapolis, Indiana
Wednesday, November 9, 2022

A. Call to Order
Chair Gard called the meeting to order at 1:33 p.m. A quorum was present.

Members present: Beverly Gard, William Etzler, Dr. Joanne Alexandrovich, Calvin Davidson, Dr. Ted Niemiec, Chris Horn, Ken Rulon, John Ketzenberger, R. T. Green, Carrie Kozyrski, Emily Totten, Katie Nelson, Dan Bortner, and Brian Rockensuess.

Chair Gard welcomed Emily Totten from Indiana Economic Development Corporation to the board. She replaced Mark Wasky.

B. Approval of Meeting Summary of September 14, 2022
Chair Gard called for approval of the September 14, 2022, meeting summary, which was approved.

C. IDEM Reports
Commissioner's Report
Commissioner Rockensuess, talked about the compensation study. He stated that across the state, on average, employee wages were 30 percent below the prevailing minimum compared to the market and nonprofit sectors. IDEM employees had an average salary increase of 22 percent with a minimum of at least 5 percent. Those that received 5 percent were already at or near the market rates for their position. The Commissioner is hoping that with this increase, the state will be able to fill current vacancies and retain current staff members.

The Commissioner also spoke about the legislative agenda. IDEM is working on two air items. The first is concerning air fees because IDEM has run out of the funds that were increased two years ago due to significant decreases in air emissions upon which revenue for the program is based. The other item concerns removing the requirement that air quality designation be in state rules so that a new federal designation would become effective at the state level on the effective date of the federal rule.

Chairman Gard then asked if a study committee had convened about the rulemaking process. The Commissioner said that he and Parvonay Stover met with Sen. Garten, who is the head of the task force. They provided a document to him and the task force comparing the rulemaking and the statute so the committee would have a better understanding of IDEM's process and how it differs from other agency processes.

Rules Update
Ms. Chris Pedersen, Chief, Rules Development Section (RDS), Office of Legal Counsel (OLC), spoke on the rulemakings that could come before the next Environmental Rules Board meeting. which is scheduled for March 8, 2023.

Policy Update
Ms. Nancy King, Assistant Commissioner of Office of Legal Counsel, spoke on the ERB attendance policy under IC 5-14-1.5-3.6. The policy adopted by the board states that at least 6 members must be physically present for each board meeting, and that each board member must be present for at least one meeting per year. She spoke about the convenience and success of the Zoom meetings but stated that if the policy is violated, it could jeopardize rulemaking actions resulting in rulemakings having to be restarted. She expressed appreciation for board members sending their notifications on participation to Karla Kindrick before each board meeting and indication if they would be physically present at the meeting.

D. Rules

1. Clark, Floyd, Lake and Porter Counties Ozone Redesignation Emergency Rule
Chair Gard opened the hearing for adoption the emergency rule for the 8-Hour Ozone Redesignations for Clark, Floyd, Lake, and Porter Counties. Mr. Seth Engdahl, Rule Writer, RDS, OLC, spoke for the agency. Mr. Engdahl said this emergency rule temporarily incorporates the current federal designations for rules found at 326 IAC 1-4 and 326 IAC 2-6-1.

Dr. Alexandrovich asked about the effective date on emergency rules. IDEM staff responded to the questions and there was further discussion. There were no public commenters.

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

2. Ignitable Hazardous Waste
Chair Gard opened the hearing for the final adoption of amendments to 329 IAC 3.1 for Ignitable Hazardous Waste. Mr. Daniel Watts, Rule Writer, RDS, OLC, spoke on the rule. The rule amends the Hazardous Waste Rules in 326 IAC 3.1-6 with the incorporation by reference of recent federal updates to the identification of ignitable liquid hazardous waste.

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

Mr. Bortner moved to final adopt the rule and Mr. Rulon seconded. By a roll-call vote, the rule was final adopted.

3. Safety-Kleen SO_2 Revisions
Chair Gard opened the hearing for the preliminary adoption of amendments to 326 IAC 7-4.1-6 for Safety-Kleen SO_2 Revisions. Ms. Krystal Hackney, Rule Writer, RDS, OLC, spoke on the rule. Ms. Hackney stated that Safety-Kleen requested the rule to address their monitoring needs and ensure compliance with an Agreed Order requirement for the installation of a CEMS to address SO2 violations.

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

Mr. Etzler moved to preliminary adopt the rule and Mr. Davidson seconded. By a roll-call vote, the rule was preliminary adopted.

4. Definition of Solid Waste

Chair Gard opened the hearing for the preliminary adoption of amendments to 329 IAC 3.1-5 and IAC 3.1-6 for Definition of Solid Waste. Mr. Daniel Watts, Rule Writer, RDS, OLC, spoke on the rule. Mr. Watts stated the rule amends hazardous waste requirements in 329 IAC 3.1 with the incorporation by reference of recent updates to the federal identification of solid waste for the purposes of hazardous waste management and is a response to a federal court vacatur of limited requirements in a 2015 federal rule for the definition of solid waste, which IDEM has previously adopted.

Mr. Davidson asked if the House Bill 1226 was the same one from last session. Mr. Watts confirmed that it was. Mr. Rulon asked the Commissioner if IDEM would need to initiate another rulemaking in the future if the federal standards become more stringent, and Mr. Rockensuess confirmed that we would. There were no public commenters.

Mr. Etzler moved to preliminary adopt the rule and Mr. Green seconded. By a roll-call vote, the rule was preliminary adopted.

5. Underground Storage Tank Revisions

Chair Gard opened the hearing for the preliminary adoption of amendments to 329 IAC 9 for Underground Storage Tank Revisions. Mr. Seth Engdahl, Rule Writer, RDS, OLC, spoke on the rule. Mr. Engdahl indicated the rule repeals sections of 329 IAC 9 that are either more prescriptive or identical to their federal counterparts, and then incorporates the relevant sections of the CFR.

Ms. Kozyrski asked about the notification forms referenced in the rule. IDEM staff responded to the questions and there was further discussion. There were no public commenters.

Mr. Davidson and Mr. Horn moved to preliminary adopt the rule and Mr. Green seconded. By a roll-call vote, the rule was preliminary adopted.

E. Non-Rule Actions

1. Non-Rule Policy Documents

Ms. Lynette Schrowe, from the Office of Land Quality, presented the non-rule policy document on Soil Management Plan. Ms. Schrowe stated that the document was developed to create one comprehensive document for users, to ensure users are aware of the regulatory and policy permitting requirements associated with managing contaminated soil, and to minimizing human exposure to contaminated soil.

Dr. Alexandrovich asked about the how the comments are sent out. Ms. Schrowe and Commissioner Rockensuess responded to the questions and there was further discussion.

Ms. Peggy Dorsey, Assistant Commissioner for the Office of Land Quality, presented the non-rule policy documents on State Cleanup Program Guide, Voluntary Remediation Guide, Petroleum Remediation Program Guide, RCRA Closure and Corrective Action Guide and Institutional Controls Program. Each individual guidance is a component of IDEM's remediation closure guide.

Ms. Kozyrski asked about aspects of long-term stewardship and if the agency would hold an informational forum to present these documents. Dr. Alexandrovich asked how the actual NPD and the documents were related, to which Ms. Dorsey explained that the guide was broken up into several individual NPDs to make future amendments less lengthy and cumbersome.

2. Citizen's Petition

Chair Gard asked for an update on the Citizens petition. Craig Williams stated that there have been several meetings and the group has made excellent progress on the petition. Paul Higginbotham, Deputy Assistant Commissioner of Office of Water Quality, also said that the meetings were moving well. The group is looking into how to handle each use attainability analysis to help the smaller communities. Mr. Bill Etzler has been part of the meetings and he said that there has been a lot of information and discussion exchange between the agency and the petitioners.

Dr. Alexandrovich asked about the situation with Fort Wayne and about the White Paper. Mr. Rulon asked about the sampling for CSO. Mr. Etzler asked about the discharge limit for E. Coli for a wastewater plant. There was discussion on whether to retire the Petition and move forward more informally with discussions between the agency and the petitioner work group. IDEM committed to continuing discussion with the petitioners to find a solution.

Chair Gard made a motion to deny the original request to start rulemaking to adopt 2012 recreational criteria federal regulations. Dr. Niemiec seconded, and the motion was approved.

F. Other Matters

1. Open Forum

No discussion

2. Tentative Date and Location of Next Meeting

The next meeting is March 8, 2023, 1:30 p.m., Indiana Government Center-South, Conference Room A, 10 North Senate Avenue, Indianapolis, Indiana.

G. Adjournment

Chair Gard adjourned the meeting at 3:33 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.