

Summary Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Zoom Meeting
Indianapolis, Indiana
Wednesday, June 14, 2023

A. Call to Order

Chair Gard called the meeting to order at 1:28 p.m. A quorum was present.

Members present: Beverly Gard, William Etzler, Dr. Joanne Alexandrovich, Calvin Davidson, Dr. Ted Niemiec, Chris Horn, Ken Rulon, Carrie Kozyrski, Katie Nelson, Chris Smith, Michael Schuler, and Brian Rockensuess.

B. Approval of Meeting Summary of March 8, 2023

Chair Gard called for approval of the March 8, 2023, meeting summary, which was approved.

C. IDEM Reports

Commissioner's Report

Mr. Brian Rockensuess, Commissioner, talked about the staffing for IDEM. As of right now, there are 801 employees at IDEM. This is up from 769 in January.

Next, Mr. Rockensuess recognized Colleen Rennaker, as the new Deputy Assistant Commissioner of Office of Land Quality. She will be overseeing the Tanks Branch. He also introduced another new employee, Amanda Hall. She will be overseeing new staff training and development, a leadership program, and a mentorship program throughout the agency.

Mr. Rockensuess talked about U.S. EPA's climate pollution reduction grant, also known as the greenhouse grant initiative. It is a two-part grant, and IDEM finishing up the final application process with U.S. EPA that could allow IDEM to receive up to 3 million dollars to help plan how to reduce greenhouse gas within the state. IDEM is also bringing on a vendor to help with the greenhouse gas inventory and with the outreach and communication for those is interested in being part of the program. The second part would be 4.6 billion dollars in competitive grants which is voluntary.

Mr. Rockensuess talked about the State Cleanup Program and Voluntary Remediation Program. IDEM is trying to reduce the time frame that responsible parties remain in the programs from 11-14 years to 4-7 years. IDEM will be communicating with remediation communities in July or August.

Mr. Rockensuess discussed several bills being considered during the legislative session that could impact the environmental field. He is proud and thankful for Drake Abramson, Legislative Director for IDEM. He helped with getting the air permit fees bill through the legislative session, which gave IDEM the ability to increase air permit fees. There is the bill for the Excess

Liability Trust Fund. This allows for more compliance-based expenditures to come out of the fund and to spend the money before there is a problem. He mentioned a study bill that IDEM will be doing on wind blades, solar panels, and lithium batteries dealing with how they will be disposed of long term.

Mr. Rockensuess updated the board on House Enrolled Act 1623. He said that Nancy King, the legal team, and the rules team are working with the Governor's office to understand the changes and what happens with the rules process going forward, as well as what rules will be grandfathered into the old process.

Chairman Gard asked for clarification on the regulation of wetlands and the Supreme Court's input on what will be protected in Indiana. Mr. Rockensuess said there was language on wetlands that was floating around but it did not make it through the session. IDEM will be working with the builders and other parties to come up with a compromise on how to deal with the different classes of wetlands given the recent case in the U.S. Supreme Court. In the past few years, many wetlands in Indiana were considered federally protected due to their connections with federal nexus bodies of water. However, this is no longer the case, and the wetlands in the state that would have been federally protected a couple months ago would now fall under the state wetland program.

Dr. Alexandrovich asked about how broad the greenhouse gas inventory would be and if it would be done in two years. Mr. Rockensuess said there will be multiple agencies involved and that IDEM would be looking into hiring a specialized third party for the inventory.

Ms. Kozyrski asked about streamlining proposals for remediation to affected communities, and Mr. Rockensuess said that it is being worked on with a community of consultants and IDEM should be able to show people once it is more developed.

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 August 9, 2023. The board had no questions.

D. Rules

1. Title 326 CFR Update

Chair Gard opened the discussion for final adoption of References to the Code of Federal Regulations (CFR), Title 326 CFR Updates. Ms. Keelyn Walsh, Rule Writer, RDS, OLC, spoke for the agency. Ms. Walsh requested that the board consider final adoption of amendments to rules at 326 IAC 1-1-3 and 326 IAC 20-1-1. Ms. Walsh stated that this rulemaking incorporates citations by reference from Titles 29 and 40 of the CFR into 326 IAC. By updating the reference date to July 1, 2022, 326 IAC will be consistent with those regulations that the federal government promulgated between July 1, 2018, and June 30, 2022. This rule also amends 326 IAC 20-1-1 to incorporate by reference 40 CFR 63, Subpart C to add 1-bromopropane to the Clean Air Act Section (CAA) 112(b) List of Hazardous Air Pollutants.

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

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

2. Title V Permitting Fees

Chair Gard opened the discussion for preliminary adoption of Title V Permitting Fees. Mr. Seth Engdahl, Rule Writer, RDS, OLC, spoke for the agency. Mr. Engdahl requested that the board consider preliminary adoption of amendments to rules at IAC 326 2-1.1-7. This rule is statutorily mandated and increases the annual base fee for two permit types: Title V Operating Permits and Federally Enforceable State Operating Permits. Specifically, the annual base fees for these permits would increase from the current fee of \$2,381, to \$6,100. This will result in an increase in revenue of roughly \$4.3 million per year to support the Title V permitting program.

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

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

3. Wastewater Treatment Plant Operator Certification

Chair Gard opened the discussion for the preliminary adoption of amendments to 327 IAC 5-23 for Wastewater Treatment Plant Operation Certification. Ms. Krystal Hackney, Rule Writer, RDS, OLC, spoke concerning the rule. This rulemaking repeals the existing rule at 327 IAC 5-22 and replaces it with 327 IAC 5-23. It addresses state statutory requirements made in 2015 and 2018 that affect IC 13-18-11. These statutory changes allow electronic examination through a third-party administrator, add certification examination fees, require proof of compliance with continuing education requirements submitted with certificate renewal applications, update the renewal cycle for operator certificates from two years to three years, and add reciprocity for certified operators from other states or U.S. Territories applying for certification in Indiana. This rule also reorganizes and restructures sections and updates sections with necessary changes. IDEM will present a non-rule policy document concerning the education and experience substitutions to the board when the final adoption hearing is held.

Ms. Kozyrski asked a question regarding the requirements for certification. IDEM staff responded to her question and there was further discussion. There were no public commenters.

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

4. Definition of Solid Waste

Chair Gard opened the discussion for the final adoption of amendments to 329 IAC 3.1-5-4, 329 IAC 3.1-5-7, and 329 IAC 3.1-6 for Definition of Solid Waste. Mr. Daniel Watts, Rule Writer, RDS, OLC, spoke concerning the rule. This rule was presented a second time because the final rule adopted on March 8, 2023, did not include the amendments to 329 IAC 3.1-6 from the recently effective LSA# 22-216 final rule. If this rule had been promulgated as previously adopted, it would unintentionally have repealed the recently effective rule requirements. This rule incorporates the additional Federal Register notice that was adopted in LSA# 22-216, which

became effective on March 24, 2023. No other changes to the rule language were presented for final adoption. With this rulemaking, IDEM's hazardous waste rules will be consistent with the federal definition of solid waste and comply with the state statutory changes in Public Law 120-2022 pertaining to these federal requirements (IC 13-19-3-1(b)).

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

Mr. Rulon moved to adopt IDEM's suggested changes and Mr. Davidson seconded.

By a roll-call vote, the changes were adopted.

Mr. Horn moved to final adopt the rule and Ms. Nelson seconded. By a roll-call vote, the rule was final adopted.

5. Underground Storage Tank Revisions

Chair Gard opened the hearing for the final adoption of amendments to 329 IAC 9 for Underground Storage Tank Revisions. Mr. Seth Engdahl, Rule Writer, RDS, OLC, spoke on the rule. This rule makes several changes to 329 IAC 9. The overarching goal of this rulemaking is to better align the rules governing underground storage tanks in Indiana with the CFR.

Accordingly, the bulk of this rulemaking repeals sections of 329 IAC 9 that are either more proscriptive or identical to their federal counterparts, and then incorporates the relevant sections of the CFR. Repealing these sections and incorporating their federal counterparts will provide the agency and UST owners and operators needed flexibility in responding to leaks, spills, and overfills of USTs. This rulemaking also incorporates the contents of certain notification forms in 329 IAC 9-2-2. The incorporation of these forms was deemed essential by the Office of Management and Budget to provide predictability to UST owners and operators. There was also one minor change to the rule language in 329 IAC 9-2-2 that corrected an error regarding the agency that approves forms for use by the department.

This rulemaking was preliminarily adopted by the board in November of last year. IDEM chose to withdraw the rulemaking from consideration at the March board meeting to ensure that legislation pending consideration by the Indiana General Assembly would not impact the rule.

Ms. Kozyrski asked if there would be a need for a migration from the old forms to the new forms. Mr. Engdahl stated that the information from the current forms is what is put into the rule language for clarity. There were no commenters.

Mr. Smith moved to adopt IDEM's suggested changes and Ms. Kozyrski seconded.

By a roll-call vote, the changes were adopted.

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

E. 2023 Hearing on Non-Expiring Rules under IC 13-14-9.5-1.1

Chair Gard opened the discussion for the rules that do not expire under IC 13-14-9.5-1.1. Air rules in Title 326 and water rules in Title 327 were published for 30 days for comment. There were no questions or board discussion. There were no commenters.

Mr. Rulon moved to take no action and Dr. Niemiec seconded. By a roll-call vote, the motion was approved by acclamation.

F. Non-Rule Actions

Citizen's Petition on Fugitive Dust

Chair Gard opened the discussion for the revision of the Fugitive Dust Rule. The petition was presented to the board to consider the review and update of the existing fugitive dust regulations, specifically related to fugitive dust created by the companies located along East 96th street, Hazel Dell, and Gray Roads in Indianapolis, IN. Nancy King gave an overview of the Citizen Petition process. She presented IC 13-14-8-5 and stated the requirements citizens must meet to present the petition. It is up to the board to determine if the petition meets the requirements to merit a hearing.

Mr. Rulon asked about directing a rule just for a specific location in the state or if it could apply statewide. Ms. King responded that a rulemaking would most likely be applied statewide.

Chair Gard asked about mineral extraction from a site and if this is something DNR would address. Mr. Smith answered the question regarding this issue.

Chair Gard, Mr. Davidson, and Mr. Rulon stated their concerns regarding this petition.

Dr. Alexandrovich stated her concerns on the petition. She stated that the board has a duty to hear the testimony and the new evidence from the Petitioners and concluded that the petition is not plainly devoid of merit. She stated that it is the board's responsibility to hold a hearing on the issue.

Dr. Alexandrovich made a motion that a hearing be scheduled at the next meeting. There was not a second to proceed with the hearing.

Chair Gard asked for a motion to not have a hearing. Mr. Rulon made a motion that at this time, the petition is devoid of merit. Mr. Horn seconded the motion. The hearing will not be scheduled for the petition.

G. Other Matters

1. Open Forum

Chair Gard opened the discussion. Ms. Joyce Dreesen stated that she had evidence at the March meeting but was told to present it to the board at this meeting. She also said that she looked up inspection violations and results through VFC but there was nothing to be found. She emailed the Office of Air Quality Compliance and Enforcement branch to get information on the violation, but nothing has come about.

Commissioner Rockensuess said he will make sure that the Assistant Commissioner and Deputy Assistant Commissioner of OAQ get the information to her.

Mr. Ferrell Kemp of Crystal Lake Homeowners Association Board also stated that they have the evidence, but the board is not giving them the opportunity to present it.

Ms. Dreesen asked if the Homeowners Association Board could send the evidence to the Environmental Rules Board prior to the next meeting in August. Ms. King stated that they can submit the evidence to the program, and it will be provided to the board.

Ms. Joyce Voivodas stated her concerns regarding the petition and the rule and articles regarding the current measures that need to be controlled. She feels that the rules that were done in 2001 should be changed.

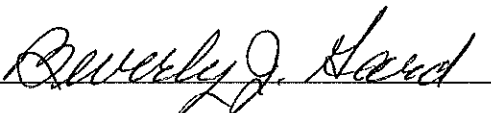
Chair Gard stated the Commissioner will take information back to his staff to address the problem.

2. Tentative Date and Location of Next Meeting

The next meeting is August 9, 2023, 1:30 p.m., Indiana Government Center-South, Conference Room A, 10 North Senate Avenue, Indianapolis, Indiana.

H. Adjournment

Chair Gard adjourned the meeting at 2:50 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>.