

Summary Environmental Rules Board
Indiana Government Center South
Conference Center Room A
Zoom Meeting
Indianapolis, Indiana
Wednesday, March 8, 2023

A. Call to Order

Chair Etzler called the meeting to order at 1:31 p.m. A quorum was present.

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

B. Approval of Meeting Summary of November 9, 2022

Chair Etzler called for approval of the November 9, 2022, meeting summary, which was approved.

C. IDEM Reports

Commissioner's Report

Mr. Brian Rockensuess, Commissioner, talked about the hazardous waste spill caused by the train derailments in East Palestine, Ohio, on February 3, 2023. Soil contaminated with butyl acrylate and vinyl chloride has been sent to the Roachdale hazardous waste facility and the Governor hired Pace Laboratories as a third-party contractor to take soil samples. The results indicate that the material tested does not contain any harmful levels of dioxins compared to acceptable levels established by U.S. EPA.

Mr. Rockensuess also discussed several bills being considered during the legislative session that could impact the Environmental Rules Board. SB 155 deals with Title V air fees and making federal designations for air pollutants effective when the federal designation becomes effective, removing the need to use the emergency rule process. HB 1001 deals with the biennium budget and change requests that the Governor included. IDEM wants to add 15 additional Drinking Water staff, continue utilizing the five and a half million in funding to finish IT projects, and ensure the funds to cover the salary increases for employees resulting from the comp study. Mr. Rockensuess also mentioned that HB 1623 was with the Senate and that several kinds of excess liability trust fund bills are moving through during the session.

Chairman Gard asked for clarification on how HB 1623 affects the board and asked if a rulemaking fact sheet had been supplied to the legislature, and Mr. Rockensuess confirmed that it had. Dr. Alexandrovich asked for clarification on the trucks dealing with the hazardous waste from the train derailment and whether any other states had received letters from EPA regarding Title V. Mr. Rockensuess addressed both questions.

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 June 14, 2023. We will have a few rules that we anticipate may be ready. The board had no questions.

D. Rules

1. Clark, Floyd, Lake, and Porter Counties Ozone Redesignation Emergency Rule

Chair Etzler opened the discussion for adoption of 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. This emergency rule temporarily supersedes 326 IAC 1-4-11 and 326 IAC 1-4-23 to change the status of Clark and Floyd Counties from marginal nonattainment to attainment for the 2015 8-hr NAAQS for ozone; it temporarily supersedes 326 IAC 1-4-46 and 326 IAC 1-4-65 to change the status of Lake and Porter Counties from serious nonattainment to attainment for the 2008 NAAQS for ozone; it temporarily bumps up northern townships in Lake and Porter Counties from marginal nonattainment to moderate nonattainment for the 2015 NAAQS for ozone; and it temporarily removes Clark, Floyd, and the southern townships of Lake and Porter Counties from 326 IAC 2-6-1.

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

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

2. Clark, Floyd, Lake and Porter Counties Ozone Redesignation

Chair Etzler opened the discussion for final adoption of amendments 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 requested that the board consider final adoption of amendments to rules at IAC 326 IAC 1-4-11, 326 IAC 1-4-23, 326 IAC 46, 326 IAC 1-4-65, and 326 IAC 2-6-1, Eight-Hour Ozone Redesignations for Clark, Floyd, Lake and Porter Counties and emissions reporting updates. Mr. Engdahl stated that this rule is substantively identical to the emergency rule that the board just adopted, and that adoption of this rule would make the changes permanent.

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

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

3. Safety-Kleen SO₂ Revisions

Chair Etzler opened the discussion for the preliminary adoption of amendments to 326 IAC 7-4.1-6 for Safety-Kleen SO₂ Revisions. Ms. Krystal Hackney, Rule Writer, RDS, OLC, spoke concerning the rule. Ms. Hackney stated that Safety-Kleen was found to be in violation of their SO₂ emission limits, resulting in enforcement action from IDEM. Safety-Kleen then

demonstrated compliance with an Agreed Order through installation of a CEMS and is awaiting certification by IDEM. This rule was requested by Safety-Kleen to address their monitoring needs and ensure compliance with the Agreed Order.

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

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

4. Definition of Solid Waste

Chair Etzler opened the discussion for the final 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 concerning the rule. This rule amends the Hazardous Waste Rules 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. IDEM removed additional state-specific requirements originally proposed in this rule due to enactment of Public Law 120-2022 and will adhere to the federal requirements in response to the court vacatur. This rulemaking will ensure that IDEM's hazardous waste rules will be consistent with the federal definition of solid waste and also comply with the state statutory changes in Public Law 120-2022 pertaining to these particular federal requirements.

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

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

E. Non-Rule Actions

1. Citizen's Petition on Fugitive Dust

Chair Etzler opened the discussion for the revision of the Fugitive Dust Rule. The petition is being 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. IDEM has reviewed the petition and determined that it meets the requirements of the statute. Ms. Joyce Dreesen, representing the group of citizens from the Crystal Lake neighborhood presented the petition and spoke on the purpose of the petition.

Dr. Alexandrovich and Ms. Kozyrski asked for information regarding the fugitive dust that IDEM could send them. Chair Etzler stated that they will take the time between this meeting and the next scheduled meeting in June to review the information, and then bring it back to the Board at the June meeting to make a decision on how to proceed from there.

F. Other Matters

1. Open Forum

Chair Etzler opened the discussion.

Mr. Sosnowski from Martin Marietta talked about the fugitive dust and how the company has been communicating with the neighborhood. He also had handouts for the board regarding the actions that they are taking.

Ms. Nelson requested that the Board receive an explanation of what they are deciding upon and what it means if a petition has merit. Mr. Burns agreed that this information could be sent.

2. Tentative Date and Location of Next Meeting

The next meeting is June 14, 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 2:35 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>.