

**SPECIAL MEETING, BOARD OF SANITARY DISTRICT COMMISSIONERS,
THURSDAY, DECEMBER 22, 2011 – 4:00 P.M. – 1100 E. 8TH STREET**

The meeting was called to order at 4:00 p.m. in the Board Room of the Administration Building, 1100 E. Eighth Street, by the President of the Board, J. Jeffrey Jones.

Commissioners present for the meeting were J. Jeffrey Jones, Ph.D., Judith Paul, Boyd W. Phelps and Ronald J. Strauss. Commissioner Linda G. Simmons was absent

Staff Members present for the meeting were:

Milorad (Mike) Milatovic, Interim General Manager & Plant Superintendent

Michael A. Hoffman, Collection System Superintendent

Doretha M. Sanders, Administrative Director

Tina M. Tabisz, Administrative Assistant

Attorney David Payne, Braje, Nelson & Janes, LLP

Attorney Mike Bowman, Plews Shadley Racher & Braun

Also present for the meeting were:

Jim Maurer, Haas & Associates

Tim Moran, The News-Dispatch

Andre Steele, ALCO TV

PURPOSE OF SPECIAL MEETING:

To consider and approve a proposed Agreed Order between the Sanitary District of Michigan City, Indiana and the Indiana Department of Environmental Management (IDEM)

Dr. Jones reiterated the purpose of the Special Meeting and asked Mr. Milatovic if he had any comments to begin the discussion. Mr. Milatovic deferred to Attorney Mike Bowman of Plews Shadley Racher & Braun.

Attorney Bowman advised that he wanted to briefly describe, to the Board, the Agreed Order that has been negotiated with IDEM, adding that most recently IDEM issued a revised agreed order on December 16, 2011, which incorporated, in their entirety, comments that were submitted on behalf of the Sanitary District.

Attorney Bowman explained that the most recent Agreed Order incorporates all of the District's comments and is an Agreed Order that he can recommend to the District for execution and approval.

Attorney Bowman took the opportunity to remind the Board that this Agreed Order was negotiated as a result of some inspections that were conducted by IDEM in 2010 as well as by the U.S. EPA in a compliance evaluation inspection that took place in May and November 2010.

Attorney Bowman explained that he is aware that IDEM and the EPA were in communication and that some of the provisions in this Agreed Order were put there at the EPA's request and that this Agreed Order will satisfy EPA's concerns as well as IDEM's.

Dr. Jones commented that he felt that the EPA's agreement is a very important point to emphasize. The Board and Attorney Bowman agreed.

Attorney Bowman stated that he would highlight, as he reviews the matter in his report, those things that it is his understanding that were added at the EPA's request.

Attorney Bowman stated that he wanted to skip through fairly quickly with the Findings of Fact with one comment; for the most part, IDEM has backed off of their earlier allegations that certain discharges, certain activities or certain events at the Sanitary District constituted violations of the NPDES (National Pollutant Discharge Elimination System) permit or IDEM regulations of the Clean Water Act.

Attorney Bowman gave the example of Paragraph 7, they no longer claim that the factual allegations were violations. They simply now say that they may be violations. He added that there are several paragraphs of that nature and they have, therefore, backed off a number of their violations.

Attorney Bowman then directed the Board's attention to the actual Order section, which he identified as really the "meat and potatoes" of the Agreed Order that describes what the Sanitary District would be agreeing to do in the future.

Attorney Bowman highlighted the following points:

Paragraph 3 of the Agreed Order – IDEM had asked that the Sanitary District continuously monitor many portions of the Collection System. During a meeting with IDEM, they were asked to be more specific as to what they meant by monitoring because we didn't want an ambiguous monitoring requirement that could be interpreted differently by one IDEM inspector than another IDEM inspector on the next day.

IDEM came back with a list of approximately two dozen locations that they wanted monitored whenever it rained. This list was ultimately scaled back to two locations: B&E Marina and Lakeshore Drive. These are locations where Sanitary District actually go out and visually inspect after a heavy rainstorm anyway. Therefore, the District is not being asked to do any more than is already being done.

Paragraph 5 and Paragraph 7 – IDEM has asked that the Sanitary District makes sure that specific equipment in the facility and in the Collection System are maintained and operated in good working order at all times.

It was explained to IDEM that some equipment, for example at the Krueger Lift Station that has four pumps, has built-in redundancy and there will be times that one of those pumps will be taken down for maintenance. The Sanitary District should not be penalized if a planned redundant pump is taken down for maintenance as well as there should be no penalty if a pump fails through no fault of the Sanitary District.

IDEM agreed to add a sentence of both of those paragraphs that provides that, if a piece of equipment fails or has to be taken down for maintenance, it is not a violation of the Agreed Order so long as the maintenance that is necessary is done in a timely and reasonable fashion.

Paragraph 8 is the real “meat and potatoes” of the Agreed Order because it is the paragraph that requires the Sanitary District to develop and propose a Compliance Plan. The Compliance Plan will allow the Sanitary District to identify those projects or items that need to be done in order to assure compliance with the NPDES permit audit on a going forward basis.

IDEM initially proposed that the Compliance Plan be submitted in 30 days; however they have now agreed that the Sanitary District will have 120 days from the effective date of the Agreed Order. Therefore, if the Agreed Order is signed today, it would be 120 days from today that the Sanitary District would have to submit a Compliance Plan to IDEM.

There are very few specific things that have to be submitted in a Compliance Plan. The Compliance Plan has to verify that the de-chlorination system bypass has been effectively sealed. Nothing more has to be done because it has been effectively sealed, however the Compliance Plan simply needs to demonstrate that it has been effectively sealed. No other real work is necessary.

The Compliance Plan does require the Sanitary District to take a look at the final effluent flow meter. This is another provision in which IDEM agreed to back away.

The initial proposed order IDEM wanted was that the Sanitary District put in a final effluent flow meter. The Board may remember that there are some physical difficulties with putting in a final effluent flow meter because of the relationship between high water levels in Trail Creek and the overflow elevation of the de-chlorination system. There just wasn't enough room, or hydraulic head, to install a final effluent flow meter.

IDEM has agreed that the Sanitary District, as part of the Compliance Plan, can propose to put in a final effluent flow meter; to do so may involve doing something like replacing the chlorination system with a UV (Ultraviolet) disinfection system or to justify a final effluent flow meter that is not located at the final effluent. Therefore, there may be an opportunity to put in a flow meter at the outlet of the chlorination system, between the chlorine contact tanks and the re-aeration tanks.

There may be an opportunity that will have to be evaluated and justified and demonstrated to IDEM. However, if that demonstration can be made, IDEM may allow that final effluent flow meter to be installed.

Attorney Bowman explained that the work does not have to be done in 120 days, only the Compliance Plan. We do not know what the plan will say and may require, for example, cleaning of a siphon, which cannot be done in 120 days. Another example may be the replacement of some lift station components that cannot be done in 120 days. Therefore, the plan will have to include a schedule for performing whatever work is identified as needing to be done to comply with the Compliance Plan.

Attorney Bowman stated that we do not know what the deadline for the final compliance date will be because it depends on what projects are identified in the Compliance Plan.

At the conclusion of that work, the Sanitary District will have to demonstrate, for six consecutive months, that it complies with its permits. Although this sounds onerous, compared to most of the Agreed Orders that IDEM has entered into in the last two years, six months is not a bad period. Many cities and towns have been required to demonstrate compliance for 12 months. Therefore this is a pretty good provision as well.

Attorney Bowman advised that the in-plant bypass between the chlorine contact tanks and the re-aeration tanks was one of the additions by the EPA as was, the assurance that the discharge from the CSO (Combined Sewer Overflow) basin, Outfall #002, complies with the *E.coli* limitations.

Attorney Bowman explained that IDEM has agreed to reduce the civil penalty from the approximate \$38,000 in the initial proposed Agreed Order to \$31,100, which would then be payable within 30 days of the effective date. Again, if the Agreed Order is signed today, the payment would be due 30 days from today.

Attorney Bowman advised that IDEM also agreed to add a "*force majeure*" provision in the Agreed Order. He explained that, if the Compliance Plan requires the replacement of a piece of equipment that is a capital project that requires the services of a particular unionized trade, for example, and that union goes on strike so as to prevent the District in meeting the implementation scheduled identified in the compliance plan, this would be a condition of "*force majeure*".

Attorney Bowman stated that he had highlighted the Order and asked if there were any questions.

Mr. Strauss commented that, if all of the District's legal counsel and professional staff approves of the Agreed Order, he supports them.

Dr. Jones clarified, to reiterate what he understood from the start, that Attorney Bowman recommends Board approval. Attorney Bowman agreed.

Dr. Jones added that the Board has had an opportunity for several reviews of this document in several iterations and have responded with their own concerns and, as Attorney Bowman has pointed out most, if not all, of those concerns have been taken into account in the final version.

Dr. Jones entertained a motion to approve the Agreed Order, as presented.

Ms. Paul made such a motion – seconded by Mr. Strauss. No discussion or comment on the matter. Motion carried 4 – 0 in favor.

Dr. Jones thanked Attorney Bowman adding that this brings to a conclusion a long and arduous process of negotiation and the Board appreciates Attorney Bowman's work very much. Additionally, Dr. Jones is very glad that the Board was able to put this to rest prior to the end of the year and he believes that this opinion is shared by IDEM as well.

Dr. Jones asked if there was any other business that needs to come before the Commission. There was none.

The next Regular Monthly Meeting of the Board of Sanitary District Commissioners –
January 25, 2012 – 1:00 p.m. – 1100 E. 8th Street

There being no further business to come before the Board at this time, on motion duly made and seconded, the meeting then adjourned.

Keith A. Harris, Secretary