



Midwest Environmental Compliance Conference November 1-3, 2016

Latest Developments at IDEM Emerging Issues in Indiana Environmental Law

Cheryl Gonzalez
Barnes & Thornburg LLP
11 S. Meridian Street
Indianapolis, Indiana 46204
(317) 231-7557
Cheryl.Gonzalez@btlaw.com



Overview

- Regulated Community view on IDEM Updates
- Administrative Decisions by OEA
- Impact of federal actions on Indiana sources

IDEM Update

- Attainment designations for ozone and sulfur dioxide
 - Considerations for planned projects
 - Interplay with neighboring states
 - IDEM use of Commissioner's Orders
- WOTUS litigation
 - Consider impact on IDEM Isolated Wetlands Program

IDEM Update

- Coal Combustion Residuals (CCR) Rule
 - Potential need for legislative fix to obtain approved SWMP (IC 13-19-3-3(1))
 - Potential effect of approved SWMP with respect to third party suits
- Definition of Solid Waste (DSW) Rule
 - Rule adopted (8/1/16), but not yet effective
 - New exemptions available under new DSW found at 40 CFR 261.4(a)(23), (24), and (27)

Administrative Decisions

- *Glidden Fence*, 2015 OEA 1
 - IDEM proposed penalty of \$5,250 for alleged open burning violations
 - OEA reduced penalty to \$2,500
 - OEA moved the base penalty to the “bottom of the box” and lessened the multiplier for history of noncompliance to arrive at reduced penalty
- Filing appeals before OEA
 - *Century Oil*, Excess Liability Trust Fund Appeal

Federal Actions' Impact on Indiana

- Attainment Designations, WOTUS, CPP
- Increase in EPA-assessed penalties, effective August 1, 2016
 - 40 CFR Part 19, Table 2
- Updated Nationwide 404 Wetlands Permits from Army Corps of Engineers
 - March 18, 2017 - Existing NWP's expire
 - Jun. 1, 2016 - Proposed Rulemaking to reissue and modify existing NWP's (81 FR 35,168)



Questions?

Cheryl Gonzalez

BARNES & THORNBURG LLP

11 S. Meridian Street
Indianapolis, Indiana 46204
(317) 231-7557

Cheryl.Gonzalez@btlaw.com