

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Date: May 10, 1995

Subject: APCB, WPCB, SWMB Citizen Rulemaking Petition Procedures

Authority: IC 13-7-7

File repository: The public may inquire at the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, file rooms on the 10th floor (Air); 11th floor (Water); 12th floor (Solid and Hazardous Waste) to review and/or request information regarding citizen petitions to initiate rulemaking that have been filed with each board.

Air Pollution Control Board
Water Pollution Control Board
Solid Waste Management Board

Introduction: Citizens can initiate rulemaking under IC 13-7-7-3 by presenting an environmental board with a petition with two hundred (200) signatures on it. If hearings have not been held on the subject in the last six (6) months and if the proposal is not "plainly devoid of merit", the board must give notice and hold a hearing on the proposal.

The statute predates the enactment of SEA 302, ("the rulemaking statute") which added IC 13-7-7.1 to the Indiana Code. The new rulemaking statute provides greater citizen participation but it does not outline how a citizen petition progresses through the rulemaking process to promulgation.

Each rulemaking petition must be evaluated on a case-by-case basis. However, procedures should be standardized as much as possible to provide consistency for staff and the public.

The threshold questions for each citizen rulemaking statute are provided by IC 13-7-7-3:

- 1) Is the petition "supported by a statement of reasons and accompanied by a petition signed by at least 200 persons?"
- 2) Does the petition "not deal with a subject on which a hearing was held in the previous six (6) months of the submission of the proposal?"
- 3) Is the proposal "not plainly devoid of merit?"

If the board answers all three questions affirmatively, the board should "give notice and hold a hearing on the proposal."

Citizen Petition-Initiated Rulemaking Procedure

1. The board examines the three (3) statutory criteria at a regularly scheduled board meeting. If the board answers all three criteria affirmatively, then:

- a. The board appoints a hearing officer, directs the hearing officer and/or staff to determine the hearing date and hearing location and to provide appropriate notice either statewide or locally of the hearing on the citizen rulemaking petition. Announcement of the public hearing would also be sent to the first two hundred (200) names listed on the petition. This announcement would include notice that written comments would also be accepted into the record. The hearing officer would be directed to report his findings and recommendations to the board.
- b. The first two hundred (200) names listed on the petition will be notified of the Board meeting at which the hearing officer will report the petition. The public hearing would be held separately from a board meeting. Notes would be taken but there would be no official transcript of the hearing.

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c. At a regularly scheduled board meeting, consideration of the hearing officer's findings and recommendations would be placed on the board agenda.

d. Based on the hearing officer's findings and recommendations, the board would vote to proceed with the rulemaking or go no further.

e. If the board decided to proceed, staff would be directed to begin rulemaking procedures with publication of notice of first comment period in the *Indiana Register*.

2. The staff and board would follow the remaining rulemaking procedures set by IC 13-7-7.1.