

Fort Wayne-Allen County Department of Health Minutes
Board of Directors Meeting
October 21, 2013

The regular meeting of the Board of Directors of the Fort Wayne-Allen County Department of Health was called to order in the Council Chambers located at 200 East Berry Street, Fort Wayne, Indiana, at 5:45 p.m., pursuant to the notice sent to all Directors in accordance with the bylaws.

The following Directors were present: Dr. William Pond, Rick Regedanz, Patricia Hays, Mary Hess, Tim Pape and Dr. Todd Rumsey. Absent: Terri Farr.

Dr. William Pond, President, presided over the meeting. Jennifer Miller recorded the proceedings of the meeting.

Dr. Pond called the meeting to order at 5:45 p.m. The minutes from the previous meeting were approved with one requested correction by Dr. Pond which was to add "Past President" to the title in the minutes for Joseph Steensma who resigned from the Board earlier this year. Motion was made to approve the July 15, 2013 minutes by Dr. Todd Rumsey and seconded by Rick Regedanz.

Motions passed and votes taken at this meeting:

- Motion was made to approve the July 15, 2013 minutes by Dr. Todd Rumsey and seconded by Rick Regedanz. (MPU)
- A vote was taken and passed unanimously to give a do pass recommendation to the proposed Lodging Establishment Ordinance.
- Motion was made to give a do pass recommendation to the amendments to Allen County Code, Title 10, Article 2 (Food & Beverage Ordinance) (MPU)
- Motion was made by Patti Hays and seconded by Rick Regedanz to approve appointment of Mark Herber to serve as Board representative on the Allen County Regional Water & Sewer District (ACRWSD) for 2014 & 2015 and Gary Chapple to serve as ex-officio Board representative on the ACRWSD for 2014 & 2015. (MPU)
- A vote was taken and passed unanimously to uphold the Department of Health's refusal to issue a certificate for sewer system connection exemption pursuant to IC 13-26-5 to Steve and Kay Till (13906 Auburn Road) as their current septic system is in failure.

Thank You and Welcome – Dr. William Pond

Dr. Pond thanked Rick Regedanz for eight years of service for the Board of Directors. This was his last meeting before his term ended and he has decided not to seek re-appointment. Dr. Pond also welcomed Tim Pape as a new member of the board.

Award Presentation- St. Joe Community Health Foundation- Mindy Waldron

Mindy Waldron presented Meg Distler, Executive Director of the St. Joe Community Health Foundation, with a plaque expressing appreciation for all the support the foundation has provided the Department of Health for nearly 15 years. Close to \$1,000,000 has been provided in funds over the years to support the department's Childhood Lead Poisoning Prevention Program, purchase and installation of an electronic medical records system, independent health researchers, two part-time interpreters and more. Mindy concluded by also thanking Meg and the foundation not only for their monetary support but support of the Department of Health's staff as well.

Sewer Board Update – Gary Chapple, Director of Pollution Control:

Construction continues progressing on both of the new projects in the Greater Cedar Creek area and in the Wheelock Road area. All contractors are still on track for an expected completion timeline in the next month to month-and-a-half for these projects. About half of the seventeen septic replacement projects (under the State Revolving Fund Program

explained in prior meetings) have been completed and received operating permits. Two of these systems have a substantial amount of work remaining but others are all nearing completion. The District is beginning exploration of whether to seek funding for another round of these system replacements. The Department of Health continues to work with the Allen County Regional Water and Sewer District as they work to develop their list of projects for the next funding round, which includes sewer extensions, community decentralized systems and individual onsite systems.

Health Commissioner's Report – Deborah A. McMahan, MD

- Dr. William Pond highlighted items from the Health Commissioner's report in Dr. McMahan's absence.
- STI posters were distributed among primary care providers, emergency care providers and OB/GYN offices.
- The pilot program at the Allen County Jail that provides inmates with STI services is being expanded to 6 half-day clinics per month.

SEE ACTUAL COMMISSIONER'S REPORT FOR ALL OTHER ISSUES.

Administrator's Report – Mindy Waldron

- Mindy highlighted the brochure, "Inquire Before You Are a Buyer" Education campaign and brochure which helps consumers make educated decisions on home purchases that include septic systems.
- Mindy asked John Silcox, Communications Director, to share items developed for this year's flu vaccination campaign. John said that many items were aimed at educating health care workers. Posters and buttons were created for workers who become vaccinated. Trainings are also being provided by department staff to medical providers and radio PSA's were developed to help educate the general public and are airing currently.
- Personnel Report – Rubina Berumen, LPN, was hired as a nurse for Clinical Services. Amy Hesting, Healthy Homes Director, resigned. Her position is being restructured into an assistant director position that will work under the direction of Vector Control. Kim Hoffman, Administrative Assistant, in Immunization Services also resigned and the position is posted.

SEE ACTUAL ADMINISTRATOR'S REPORT FOR ALL INFORMATION SHARED.

Old Business

Lodging Ordinance Presentation - Mindy Waldron

Mindy provided a brief history (via Power Point) of how the ordinance was developed. She explained that ISDH used to have an inspection program for lodging facilities. It was discontinued because it was felt this needed to be handled on a local level. A few counties have ordinances which are primarily complaint based. Allen County has never had an ordinance. There has been an increase in the number and significance of complaints and issues locally. Visit Fort Wayne representatives approached the department about the need for an ordinance. The department met with all local entities involved and looked at best practices used all over the country. In Allen County, there are 60 lodging facilities. Thirty of those have had complaints in the last 4 years. Mindy outlined the number and kind of complaints as well. No rules govern the type of issues found in the lodging facilities. That is why the ordinance is needed. With the cooperation of representatives from the industry, the ordinance was developed. A scoring and fining structure was established. Again working with industry representatives, the ordinance was refined. Educational sessions were conducted for lodging facility owners and operators. If passed, inspections will be the responsibility of the Vector Control Division. There is a \$150 permit fee per year and fines for willful non-compliance. Facilities will be inspected once per year, unless complaints are received requiring additional inspections. Grades will be given to each facility and will need to be posted for the public to view.

Speaking in favor of the ordinance were:

Dan O'Connell, Executive Director of Visit Fort Wayne- Dan said millions of dollars are invested in convention centers in the community and visitors come and spend 450 million dollars annually. A big part of our economic development strategy is to keep them coming. As of late, there have been complaints about the lodging facilities. Large conventions and athletic events use all of the facilities in the area and he has heard many visitors may not come back if these lodging facilities are not cleaned up. If these problems are not fixed, the county will lose a sizeable piece of business. By and

large we have a lot of good properties, he said. But as of late, as properties are not being inspected, things are getting worse with those few that are problematic.

Mike Nutter, President of Fort Wayne Tin Caps. Mike said every season, TinCaps rent 1400 hotel rooms for visiting teams. Recently on a sold out weekend in Fort Wayne, the visiting team got bumped to another facility. The visiting team said they have a great ball park and great people but they didn't want to come back if they had to stay in the same facility again.

Gary Shearer, Vice Chairperson of Visit Fort Wayne Board of Directors, spoke in favor of the ordinance as well. He said this is an effective ordinance that will address all of the issues. The ordinance will help protect the traveling public and the county's hospitality industry.

Board Discussion about Ordinance: Patti Hays asked if one room in a facility has bed bugs, how do we know it won't get a good grade? Mindy Waldron and Dave Fiess, Vector Control Director, pointed out that it would be rare for a facility with bed bugs in one room to not have other problems as well. They did, however, conceded that this is a possibility and they will monitor to ensure the "grade" equates to reality as best they can. Dr. Rumsey asked about the total of rooms needed to be inspected. He pointed out that the point deductions are based on number of rooms: the smallest facilities can't get the largest deductions because there aren't the same amount of rooms as a larger facility. He said it is impossible for smallest facility to get the worst score. Dr. Pond commented that this is a great starting point for the ordinance. He suggested starting with what is written and in one year review how things are going and see if anything needs to be amended. Mindy Waldron commented that she would be happy to review in one year.

Board Vote on Do Pass Recommendation: Dr. Pond asked for a vote and the due pass recommendation passed unanimously.

New Business:

Proposed Amendments to Food and Beverage Ordinance- Ann Applegate

Ann briefly explained why four amendments are needed.

- 1) The application fee was accidentally omitted in a prior amendment version for facilities that undergo any renovations. The department charges \$140 fee. This needs to be added back into the ordinance.
- 2) The department would like to increase the fine for temporary food establishments operating without a permit. It is a growing trend that many of these vendors operate on a very regular basis and know they need a permit. The current fine for this is \$25. The department would like that increased to \$50. In addition, the fine would be increased \$25 every additional time a vendor operates without a permit. This is to curb the reoccurrences being seen by vendors.
- 3) All facility operators used to receive notice of violations by hand written notice. The ordinance does not allow for electronic means of transmission of these reports. This amendment would allow email, faxing the notices and sending them by regular mail as all inspections are now conducted electronically vs. hand-written as in the past.
- 4) The department would like to assess a fine for additional inspections needed to re-open facilities. Sometimes a facility is closed due to an imminent health hazard. When this happens an inspector leaves a detailed list on what is needed to re-open the facility. When the inspector comes back for re-inspection upon request of the operator, many of the things causing the public health hazard have not been fixed. The department is then forced to inspect more than once. The department is proposing one follow up inspection be standard. If minimum inspection needs have not been met and another inspection is required a \$50 fine will be assessed for inspections done during regular business hours. For additional inspections after that the fine will be \$100. Twenty percent of the facilities closed have not fixed the public health hazards upon re-inspection which is causing a financial burden to continue re-inspecting facilities – often after hours. It is hoped that with fines being assessed for re-inspection, facility owners will take the initial list of items to be fixed more seriously.

Board discussion of amendments: Patti Hays asked if the \$50 fine on amendment four was enough. Mindy Waldron commented that if more violations occurred an administrative hearing would take place where it is possible that more fines could be assessed. She felt at this time \$50 fine was a good starting point.

Motion was made by Mary Hess to give a do pass recommendation to the amendments to the Food & Beverage Ordinance. Todd Rumsey seconded the motion. Motion passed unanimously. Patti Hays asked for a report in six months to one year on the amount of re-inspections done and the effectiveness of this change.

Formal Appeal by Steve Till of Sewer Connection Exemption Certificate Denial pursuant to IC 13-26-5-
Dr. Pond presided over the hearing. He made introductory comments explaining procedures and swore in all participants.

Introductory Statements for the Department of Health were made by Mindy Waldron and Laura Maser. Mindy outlined the time line of events that occurred leading up to the Department of Health's denial of the sewer connection exemption certificate for the Till's property: 13906 Auburn Road, Fort Wayne, IN 46845. (See the department's actual report for timeline of events)

Mark Herber, Assistant Director Pollution Control, explained what he found during the three inspections of the Till's property:

March 12, 2013 was the initial inspection of the Till's property. Solids were present in the dosing tank. This indicates there are problems with the septic tank. There were also some maintenance issues. Mark was not able to access the perimeter drain because of dense vegetation. As he was driving away he noticed more possible issues with the perimeter drain based on where it is located. Mark said he followed up the inspection with a letter to the Till's detailing needs to be addressed before he came out again; which included uncovering the perimeter drain outlet and the septic tank outlet.

On June 24, 2013, Mark conducted his second inspection. Mark arrived to find out the septic tank outlet was not uncovered. He was not able to investigate any further. The perimeter drain area had also not been cleared. Mark was able to confirm that there were problems with the stone in the drain and the perimeter drain was likely at least 3-4' below current surface grade. Mark followed up again with a letter to the Till's stating what was needed in order for the inspection process to be completed.

July 15, 2013 – Mark returned and was able to test the water coming from the perimeter drain. The results from the test: e coli was found in the water in excess of 235 colonies forming units per 100 ml. Mark explained that finding 235 or lower colonies forming units per 100 ml is the standard for what is acceptable for a person to come in contact with. What the test found was well in excess of that. Mark stated that means by definition the Till's system is in failure.

Mindy clarified that the test found 2,419 colonies per 100 ml. The actual amount may have been higher. That reading is as high as the department's test could read without significant dilutions. That means that there is sewage in the water. Sewage should not be in the perimeter drain. By definition that means the system is discharging sewage.

Laura Maser, Legal Counsel for the department, explained that in order to get an exemption, you have to get a certificate from the Health Department stating the system is not in failure. That is a defined term in state statute. It is important to know this.

Failure by statute is when the system:

- 1) Refuses to accept sewage at the rate of design application and interferes with the normal use of plumbing fixtures. That would be a backup that is visible.
- 2) Effluent discharge exceeds the absorptive capacity of the soil into which the system discharges, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or surface waters.

- 3) Effluent discharge from the system contaminates a potable water or surface water.

Laura stated that the third reason is what applies in this situation. She said, "What we have here is a sample being taken that shows well in excess of the allowable limit of e coli by our test. That falls under the third prong of a failure. Those are statutorily defined. They are any one of those three is a failure. We are relying on number three. It is important to point that out. Because I think the owner's contention is that when he took a sample, the e coli was much less and it was not in failure."

Mindy Waldron stated that the department's sole purpose is to meet the requirement within the rule and to ensure that a septic system that is receiving a certification or otherwise is not polluting. In this case it was found to be polluting. This is why the department was not able to issue that exemption. On August 3rd, Mindy responded that the department could not accept Mr. Till's test.

Mindy finished her opening statement by stating to the board that their task was to decide if the Till's are eligible for an exemption certificate. In order to get that exemption, the system has to meet two criteria. The first of which being the most important: the system must not be in failure so it is not contributing to an issue that is detrimental to public health.

The board discussed the statute and timing of requests made for exemptions to connect to the new sewer system. The statute states that a property is eligible time-wise for an exemption from sewer connection if the property's septic system was installed within 10 years of the new sewer system. A home owner can also receive 2 five-year extensions to the original 10-year connection exemption if the septic system is still not in failure and passes inspection at each of those time frames. This requires the Department of Health to issue a certificate stating that the septic system is not in failure at each juncture. In all, the homeowner may receive a 20 year total exemption from sewer connection if the home's septic system is not in failure.

Discussion took place among the board about the timing of the Till's septic system installation date relative to the new sewer system installation and whether or not the Department of Health determines who is eligible. Laura Maser stated, "It is unclear whether this particular timing issue is a Board of Health issue or not. There has been discussion between the district and the department as to who makes the call on the time line. What is clear by statute is that it is the health department that makes the call whether or not the system is functioning properly and is not in a failure state." Laura also commented that in order to not waste department resources, timing needs to be considered so that staff members are not sent out to check systems that are not eligible for the exemption.

Board discussion: Dr. Pond asked if there were any other sources that could contribute to the positive e coli count. Tim Pape asked for clarification that the only evidence we have that the system is in failure is the test done by Mark Herber in July. Mindy indicated that this is a conclusive test showing fecal matter in the perimeter drain and that a high reading is always unacceptable. Sewage should never be in the perimeter drain. Dr. Rumsey asked if the number of tests is standard. Is one test enough to show failure? Mark Herber replied yes that no single sample can read above 235 cfu's/100 ml.

Introductory Statements by Steve Till-

Mr. Till stated four areas of concern that he had:

- 1) Three separate certification tests could not determine that our system was in failure.
- 2) Under State Statute IC-13-26-5m the Department of Health cannot overturn a decision by the Allen County Regional Water and Sewer District to overturn a decision concerning his approval for an extension.
- 3) Under the same statute, the department can't grant or deny an exemption.
- 4) There appears to be ambiguity in the Allen County Department of Health's testing procedures.

Mr. Till provided background information on the maintenance and issues with his septic system. (See Actual Letter to Board Members for information shared).

Mr. Till stated he was concerned with how the department's sample was taken and proceeded to take his own test. He stated that his test results show that the septic system is not failing with an E. coli content of 235 colonies per ml. Mr. Till asked the board to use his test results and issue the certificate to say his system was not in failure.

Discussion of Board about Mr. Till's statement

Dr. Pond stated we as a board of health have to determine that your system is not in failure. He asked Mr. Till, how can we show it is not failing? Mr. Till contended that the department's test was not accurate. Mindy Waldron, Mark Herber and Gary Chapple explained further the department's inspection policies and discuss the time line event from Mr. Till.

Dr. Rumsey asked Mr. Till how long e coli lives in nature. Dr. Rumsey said that in nature, e coli would never reach the level found in the departments test and the only reason for that level is that something is actively contributing to the environment. Mr. Till said he wasn't a bacteria expert. Mr. Till said the sample Mr. Herber took was contaminated by animal feces in the water around the drain and from prior manure use before he purchased the property. Dr. Rumsey disputed this based on science. Mr. Till said he cleaned out the end of the pipe and took the sample from inside the pipe. Mr. Till contends that the sample Mark Herber took was from the water around the area and the pipe and the sample may be contaminated from other sources. Mr. Till said he took a brush and cleaned out the pipe before he took the sample for his test.

Gary Chapple, Director of Pollution Control, stated that the department's contention is that if there is one bad sample the system is in failure.

Mindy Waldron stated some concerns about Mr. Till's test. She said, "We were not present when Mr. Till obtained this sample test-- which we all need to be on the same page that this is not an acceptable practice. We do the testing. We are experts in the field. That's what we do all day every day. We had the home owner's ability to be present at a time frame acceptable for them. But there was no discussion at this time that Mr. Till was interested in taking his own sample nor did he ask could we take joint samples and I take mine to my lab and your take yours to your lab? Or could you come out in a week? There was none of that. That is a concern for me. This is not slight on Mr. Till. We do this all day every day and conduct thousands of tests. For us to say that we take random samples from folks is a concern. The third visit was necessary in order to get what we needed. It wasn't that we kept discovering things. We stated what was needed and what needed to be done after the second inspection."

Board Discussion continued about e coli and the standard for determining failure. Dr. Rumsey commented that the standard is any one positive test results in failure and that the test results from this test went well beyond the acceptable limit. The board discussed the possibility that wildlife could contribute to the high reading of e coli in the departments test. Dr. Rumsey added that this number is too high for that possibility.

Laura Maser offered the board the observation that the department went to Mr. Till's property to either issue a certificate or not. She said that Mark Herber was always consistent in his letters stating the fact that he needed the drain cleared. For Mr. Till to say that the department set this up is inaccurate. She concluded by saying the department has no interest in preventing Mr. Till from getting this certificate but must meet the intent of the law and prevent pollution.

Dr. Rumsey asked Mr. Till to share who took his sample and how it was collected. Mr. Till responded that his son collected the sample. Mr. Till was not home when it was taken. When asked if his son had any experience collecting samples, Mr. Till replied no.

Dr. Pond asked for final comments from the department and Mr. Till.

Mindy Waldron replied, "Our concern is simply to ensure the public health is protected. When we have a sample like this there are not a lot of choices where that type of bacteria would come from. We stand behind that sample. The law is the law. It is about protecting public health. That is the reason we could not issue the certificate."

Mr. Till responded, "Thank you for listening to me. We have had three sets of inspections under different guidance. This third test isn't a true test. In my mind I can't think how these two tests could be so different."

Dr. Pond asked for final Board comments and then asked for a roll call vote.

The Board voted to uphold the decision of the Department of Health to deny a sewer connection exemption certificate.

Vote: 5-0. One abstention- Dr. Pond.

Adjournment: 9:00 p.m.

Next Board Meeting: January 13, 2013 5:45 p.m.

Respectfully Submitted,

Deborah A. McMahan, MD
Health Commissioner

William Pond, MD
Board President