



Public Notice Resource Center

October 6, 2017

Keelyn Walsh
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 N. Senate Ave.
Indianapolis, IN 46204-2251

Dear Ms. Walsh:

The Public Notice Resource Center (PNRC)¹ is certain that if the Indiana Department of Environmental Management doesn't abandon its proposal to eliminate the newspaper notice requirement for New Source Review (NSR) and Title V Permit programs, the decision will eventually come back to haunt the agency.

For that reason, we urge you to speak with Heidi Grether, director of the Michigan Department of Environmental Quality (MDEQ) and Teresa Marks, former director of the Arkansas Department of Environmental Quality (ADEQ), before finalizing your ruling. Both executives faced major controversies that were a direct result of their agency's decisions to move notices from newspapers to their own websites. They are likely to have a valuable perspective on the subject.

In September 2016, MDEQ posted notice on its website of its draft approval of a proposal to allow Nestle Waters North America to extract significantly more groundwater in Osceola County for its Ice Mountain bottling plant in the state. Although the notice had been posted on the MDEQ website for 42 days, citizens in Michigan were shocked to learn about the proposal when a story about it was published on Oct. 31 in a local newspaper, the Grand Rapids Press, and on its website, MLive.com.²

MDEQ did not receive a single comment on the proposal before the newspaper story brought it to light. Three days after the article was published, the agency had received 1,100 email messages about the proposal.³ The flood of citizen input forced MDEQ to extend the comment period on three separate occasions by a total of 165 days, and to schedule a public hearing.⁴ By early December, the agency had received over 3,000 comments⁵; by April of the following year, MDEQ Director Grether said she had personally received over 35,000 emails on the subject.⁶

Speaking to a group of environmental lawyers, Ms. Grether admitted that the notice on the MDEQ website wasn't enough. "Was (the Nestle proposal) advertised and noticed in a way it should have been?" she asked. "Probably not, it appears to me."⁷

In August 2012, ADEQ approved a permit to allow Cargill and a group of local farmers to build a Concentrated Animal Feeding Operation (CAFO) on the banks of the Buffalo National River. Although it had been posted for 30 days on the ADEQ website, citizens in Newton County were astonished when they discovered later that year that a hog farm was being built near their homes.⁸

The state of Arkansas likely has spent, at a minimum, hundreds of thousands of dollars defending and settling lawsuits filed over the hog farm.⁹ If ADEQ had instead spent a few hundred dollars publishing notices in a local newspaper, the citizens living near the farm would have had an opportunity to weigh in on the proposal and much of the conflict may have been avoided.

The irony surely wasn't lost on Ms. Marks, the former ADEQ director. "I understand the way people feel," she told a local newspaper when she was still heading the agency. "They feel like this happened and nobody knew anything about it."¹⁰ That's what happens when state environmental agencies decide to post notices on their websites instead of local newspapers.

Nevertheless, federal and state environmental agencies persist in moving their public notices from newspapers to government websites despite clear evidence that it reduces transparency and citizen engagement. Perhaps it's because employees of agencies like IDEM and the Environmental Protection Agency (EPA) have developed certain prejudices about this issue based on casual ideas common to their work environments. Like many other urban professionals, agency personnel often spend much of their day working on the internet from their computers and smartphones. The idea that the internet has eclipsed print media has become such an article of faith they don't even feel the need to provide any evidence when they issue proposals to move public notice to their own websites. So perhaps it's understandable that they come to believe that newspaper notice is a wasted expense.

But it only requires a few moments of reflection on the issue to realize that newspapers and their websites are still far more effective at providing official notice than government websites.

First, print newspapers are intrinsically superior to the internet as a communication medium for public notice due to the difference in how humans process information. The size of the pages in a newspaper together with the tactile experience of leafing through them encourages serendipity, leading readers to find information they weren't expecting to see. Therefore, newspaper notices will always be seen by many people who didn't pick up the paper intending to read them.

People behave differently on the internet. They tend to be more goal-directed, seeking specific information via direct access or by way of search tools like Google or Bing. Therefore, they are unlikely to find information they aren't looking for. So public notices on websites get lost and are easily hidden.

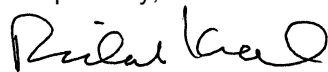
The serendipity factor is especially significant in the public notice context because few people actively search for information like meeting notices or government agency proposals. This helps to explain why, for over 200 years, policymakers have chosen to publish notices in newspapers, where some members of the community are likely to find them. The internet hasn't upended that equation.

Second, public notices eliminated from newspapers are also removed from newspaper websites. That's important because the great majority of newspaper websites in the state of Indiana generate significantly more traffic than the IDEM site. So if it eliminates the newspaper notice requirement, IDEM would not only jettison print distribution; it would also vastly reduce the digital distribution of its notices.

Third, people who read local newspapers are more likely to be civically engaged than the average citizen. Of those who always vote in local elections, 27 percent are more likely to read the daily newspaper than a typical adult. Seven in 10 of those voters read newspaper media in print, online or on mobile devices in a typical week, and nearly eight in 10 contribute money to political organizations.¹¹

Comments the EPA made in connection with the rule that serves as the basis for IDEM's proposal¹² indicate that it is an agency goal to increase civic engagement in its rulemaking process. Although IDEM's proposal never addresses the issue, we presume encouraging citizen feedback is a goal it shares with EPA. However, in light of the considerations we have noted above, it is impossible to seriously argue that IDEM's proposed rule will increase transparency and civic engagement for NSR and Title V permit programs. In fact, the proposal never even bothers to claim e-notice will reach more Indiana citizens. It focuses instead on cost, convenience and expedience. Those are all worthy goals. Unfortunately, none are the primary purpose of public notice laws.

Respectfully,



Richard Karpel
Executive Director

¹ PNRC is a nonprofit organization based in Falls Church, Virginia, that provides education and research on the subject of public notice. It is the only national organization focused on public notice policy.

² http://www.mlive.com/news/index.ssf/2016/10/nestle_groundwater_pumping_exp.html

³ http://www.mlive.com/news/index.ssf/2016/11/deq_extends_comment_window_pla.html

⁴ http://www.mlive.com/news/index.ssf/2017/04/deq_nestle_permit_grether.html

⁵ http://www.mlive.com/news/index.ssf/2016/12/deq_nestle_grether_public_comm.html

⁶ http://www.mlive.com/news/index.ssf/2017/04/deq_nestle_permit_grether.html

⁷ http://www.mlive.com/news/index.ssf/2016/12/deq_nestle_grether_public_comm.html

⁸ <https://www.arktimes.com/arkansas/hog-farm-near-buffalo-river-raises-concerns-for-watershed-and-community/Content?oid=3013811>

⁹ <http://www.arkansasonline.com/news/2016/sep/02/settlement-reached-lawsuit-over-research-arkansas-/>

¹⁰ <https://www.arktimes.com/arkansas/hog-farm-near-buffalo-river-raises-concerns-for-watershed-and-community/Content?oid=3013811>

¹¹ Nielsen Scarborough 2014 Newspaper Penetration Report, Feb. 18, 2014,
<http://www.scarborough.com/reports/scarborough-newspaper-penetration-report.html>

¹² Federal Register (81 FR 71613)