



INSPECTOR GENERAL REPORT

2011-08-0243

October 17, 2011

FUGITIVE DUST

Inspector General David O. Thomas reports as follows:

This was an investigation into the actions of the Indiana Department of Environmental Management (IDEM). A complaint was filed with the Office of the Inspector General (OIG) by a citizen in northern Indiana, alleging that IDEM had not properly handled an investigation of fugitive dust which had damaged the complainant's boat docked near a construction site.

The Office of the Inspector General (OIG) is charged to investigate wrongdoing by state agencies. IC 4-2-7-3.

Fugitive dust causing damage to citizens may be regulated by IDEM. Specifically, as in this case, if construction sites permit piles of sand to remain uncovered and damage surrounding property, IDEM may cite these contractors for violations of the fugitive dust law. 326 IAC 4-1.

An investigation was conducted with the following findings.

There was little, if any, dispute that sand from a nearby construction site had blown onto the nearby boat of the complainant and caused damage to the

boat. The resulting damage was substantial and costly. This was reported to IDEM by the complainant, and IDEM responded the same day of the complaint. An on-site inspection was made, and IDEM officials subsequently met with the complainant on-site. A violation was subsequently determined by IDEM, and a violation letter was issued to the violator on June 20, 2011. A fine was not issued for the violation.

The controlling law is that 326 IAC 4-1 permits IDEM to take action for damage caused by fugitive dust, whether or not IDEM officials actually witness the fugitive air violation in progress. IDEM is also given discretion on whether to issue a civil fine to the violator, this being a separate determination from whether a violation will be issued. IC 13-30-4-3.

The investigation concluded with the determination that IDEM had, in fact, determined a violation based upon the complaint. Because the secondary decision of whether to issue a fine is within the discretion of IDEM, IC 13-30-4-3, there was no wrongdoing on the part of IDEM. In fact, the violation issued by IDEM could be beneficial to the complainant in the complainant's civil remedy available against the contractor and/or government entity conducting the construction. The complainant was also notified of alternative potential legal remedies for the damage incurred. Accordingly, this investigation is closed.

Dated this 17th day of October, 2011.

/s/ David Thomas, Inspector General