

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

February 10, 2021

*ACCURATE REPORTING OF INDIANA
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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF FEBRUARY 10, 2021

- - -

PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, via Zoom Conference
on Wednesday, February 10, 2021 at 1:32 o'clock
p.m.

- - -

ACCURATE REPORTING OF INDIANA
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1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Angelique Collier
5 Paul Gilson
6 Dr. Ted Niemiec
7 Dr. Joanne Alexandrovich
8 William Etzler
9 Chris Horn
10 Michael Schuler
11 Calvin Davidson
12 R. T. Green
13 Dan Bortner
14 Mark A. Wasky, Proxy, Indiana Economic
15 Development Corporation
16 Katherine Nelson, Proxy, Lieutenant
17 Governor
18 Bruno Pigott, IDEM Commissioner
19 (Nonvoting)

20
21 IDEM STAFF MEMBERS:

22 Ryan Clem
23 Nancy King
Keelyn Walsh
Dan Watts
Karla Kendrick
Martha Clark Mettler
Chris Pedersen
Matt Stuckey
Jerry Dittmer
Mark Derf
Eileen Hack
Beth Admire
Paul Higginbotham

24 PUBLIC SPEAKERS:

25 Craig Williams

26 - - -

1 1:32 o'clock p.m.
2 February 10, 2021

3 - - -

4 CHAIRMAN GARD: I'm going to call the
5 meeting of February the 10th, 2021 of the Indiana
6 Environmental Rules Board to order. I'm going to
7 call the roll to make sure that there is a quorum
8 here, and then after that, I'm going to have Ryan
9 go through the mechanics of this. You all have
10 probably done enough Zoom that you're pretty
11 familiar with it, but we'll review it.

12 Mr. Etzler?

13 (No response.)

14 CHAIRMAN GARD: When I call your
15 name, say "Yes."

16 Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Yes.

18 CHAIRMAN GARD: You're here.

19 Mr. Bortner?

20 MR. BORTNER: Yes.

21 CHAIRMAN GARD: Ms. Collier?

22 MS. COLLIER: Yes.

23 CHAIRMAN GARD: Mr. Davidson?

MR. DAVIDSON: Yes.

1 CHAIRMAN GARD: Mr. Gilson?

2 MR. GILSON: Here.

3 CHAIRMAN GARD: Mr. Green?

4 MR. GREEN: Here.

5 CHAIRMAN GARD: Mr. Horn?

6 (No response.)

7 CHAIRMAN GARD: Ms. Nelson?

8 MS. NELSON: Here.

9 CHAIRMAN GARD: Dr. Niemiec?

10 DR. NIEMIEC: Yes.

11 CHAIRMAN GARD: Comm. Pigott?

12 COMM. PIGOTT: Here.

13 CHAIRMAN GARD: Mr. Rulon?

14 (No response.)

15 CHAIRMAN GARD: Mr. Schuler?

16 MR. SCHULER: Yes.

17 CHAIRMAN GARD: Ms. Valiquett?

18 (No response.)

19 CHAIRMAN GARD: And Mr. Wasky?

20 MR. WASKY: Present.

21 MR. ETZLER: Chairman Gard, Bill

22 Etzler is on also. I was on mute; sorry.

23 CHAIRMAN GARD: Twelve, so we -- but

1 we have a quorum. It takes eight to have a
2 quorum, and I know we have 13, counting me.

3 Okay. Our first order of business
4 today -- well, Ryan, you go through the mechanics
5 of this before we start on that.

6 MR. CLEM: Sure. Happy to. Thank
7 you, Chairwoman Gard, and thanks, everyone, for
8 joining us today. My name is Ryan Clem, with
9 IDEM Communications.

10 We will be taking questions and comments
11 from the public at today's meeting. If you have
12 a question or a technical issue during the
13 presentation, please use the raised hand or chat
14 feature, and to access those features, at the
15 bottom or top of your screen, depending on what
16 device you have, you'll see a menu in the middle
17 or somewhere.

18 In that menu, there is a chat icon, which
19 you can click on to show the dia -- the chat
20 dialogue. You should also see the raised hand
21 option there. So, please utilize the raised hand
22 or chat features if you have any questions or
23 comments, and you'll be called upon at the

1 appropriate time.

2 For those joining us via phone, you can
3 also raise your hand by pressing star nine, and
4 we'll call on you then. When called upon, you'll
5 also need to unmute your phone by pressing star
6 six.

7 For everyone in today's meeting, please
8 identify yourself when speaking. If any members
9 of the media have joined us, please utilize the
10 chat feature or e-mail media@idem.in.gov if you
11 have any questions. The meeting -- this meeting
12 is being recorded and will be posted on IDEM's
13 Web site.

14 And with that, I'll turn the meeting back
15 over to you, Chairwoman Gard.

16 CHAIRMAN GARD: Thank you, Ryan. I
17 appreciate that, and thank all of you all for
18 being here today.

19 Our first order of business today is the
20 approval of the summary of the November 18th,
21 2020 Board meeting. Are there any additions or
22 corrections to the summary as presented?

23 (No response.)

1 CHAIRMAN GARD: If not, I need a
2 motion to approve them as distributed.

3 MR. BORTNER: So moved, Madam Chair,
4 Dan Bortner.

5 CHAIRMAN GARD: Is there a second?

6 MR. GREEN: Second, R. T. Green.

7 CHAIRMAN GARD: All in favor, say
8 aye.

9 (Board members responded, "Aye.")

10 CHAIRMAN GARD: Any opposed, nay.

11 (No response.)

12 CHAIRMAN GARD: The minutes from
13 November 18th, 2020 are approved.

14 Nancy, it says on here, "roll call." Is
15 that necessary?

16 MS. KING: No.

17 CHAIRMAN GARD: Okay.

18 Comm. Pigott, you have a report.

19 COMM. PIGOTT: Thank you, Chairwoman
20 Gard. I appreciate everybody's attendance today.

21 I've got three things I want to report on.

22 First, one of our -- just our metrics, in terms
23 of how we're doing as an agency. As you know,

1 the COVID pandemic has really impacted the work
2 of a lot people. Not only are people working at
3 home, but to some degree, some of the work that
4 some organizations do has been kind of cut back a
5 little bit.

6 At IDEM, some of our inspections had been
7 reduced for some period of time during the big
8 lockdown period, or hunker-down period, as
9 Gov. Holcomb had indicated, but for the most
10 part, we're back up and doing all of our
11 inspections. In terms of the work we're doing,
12 we measure progress in terms of our permits, our
13 water quality, our air quality, and our
14 inspections.

15 In terms of permits, we continue to issue
16 permits in less time than is allocated and under
17 statute, and in about 65 percent of the time
18 allowed. So, we're pretty happy with that.
19 We've got a couple of big permits that we're
20 working on, one of which is the U.S. Steel Gary
21 Works permit. Paul Higginbotham and his group in
22 Office of Water Quality are diligently working to
23 issue, or reissue, that permit. It's probably

1 the biggest permit that the Office of Water
2 issues.

3 But we're doing really well overall in
4 terms of getting our permits done on time in real
5 time, and so, I'm proud of all of the folks in
6 each of the program areas for the work they're
7 doing in that respect.

8 In terms of inspections, we set a new goal
9 in 2017 of getting our inspection reports done in
10 seven days after we conduct an inspection, on
11 average. We recognize some inspections are
12 really big and need some more time, and putting
13 together a report would take some more time. But
14 we set this ambitious goal at a time when most of
15 our inspection reports were issued in 45 days,
16 not seven days.

17 I'm able to report today that, on average,
18 we get our inspections done to date and the
19 inspection report out to facilities in just over
20 four days after an inspection is conducted. So,
21 we've become quite efficient at getting our
22 inspection reports out.

23 Our water quality, drinking water quality,

1 continues to be good, whereas 99 percent of the
2 citizens in the State of Indiana drink safe and
3 clean water. Those that report violations are
4 largely paperwork violations.

5 Air quality is improving. Our National
6 Ambient Air Quality Standards, we're getting
7 better and better. We've been working, and over
8 the last year have had more redesignations to
9 attainment than we have had in several years.
10 So, I feel as though our core work has been done
11 very well.

12 With some of the untold stories are the
13 work that people who aren't attached to permits
14 or compliance metrics do on a daily basis. Not
15 only do we have permit writers and inspectors,
16 but we also have a group of scientists throughout
17 our agency that conduct work, both in air quality
18 and land quality, and in water quality.

19 And, you know, they do really good work
20 and they've been working really hard. In our
21 Office of Water Quality, for example, our -- many
22 states have reported that they haven't been able
23 to get out and do all of the sampling that we're

1 required to do in order to ensure that we have a
2 good sense of the water quality around the state.
3 In our state, however, our folks have been able
4 to get out and meet all of the EPA commitments in
5 terms of our probablistic sampling.

6 And there's one project I want to share
7 with you today that bears just a little back
8 story before I jump into it. I'm going to share
9 my screen with you in a minute, but first, I want
10 to say that 21 years ago I joined the Department
11 of Environmental Management, and just before, I
12 mean a month before I joined, there was an
13 environmental emergency on the White River, known
14 these days as the White River Fish Kill.

15 Over a million fish were killed on the
16 White River in 1999, at the end of 1999, when a
17 corporation called the Guide Corporation emptied
18 out its wastewater treatment facility into
19 Anderson and killed the Anderson wastewater
20 treatment plant and emptied its contents out into
21 the White River, which ended up killing, as I
22 indicated, a million fish and resulted in
23 probably the worst environmental catastrophe that

1 we've had since the inception of the agency.

2 And that -- that really helped to focus
3 the agency a lot. We've improved our emergency
4 response capabilities as a result of that
5 project. We also received a good deal of money,
6 and many people, both at the Department of
7 Natural Resources and at the Department of
8 Environmental Management, were assigned the task
9 of taking the proceeds we received from penalties
10 associated with the Guide Corporation to
11 restoring the White River.

12 I know Beth Admire and Nancy King and Carl
13 at DNR worked really hard to fund -- help fund
14 projects to restore the White River. And 20
15 years later, our Watershed Assessment and
16 Planning folks undertook a project called the
17 2020 White River Mainstem Project, and one of the
18 purposes of this project was to determine what --
19 what -- what does the White River look like
20 today?

21 So, today I want to share with you a
22 little bit of the work that our Watershed
23 Assessment and Planning Branch has undertaken.

1 Can you see my shared screen? If you can, you'd
2 see it says, "2020 White River Mainstem Project."
3 Can you see that --

4 MR. CLEM: Yes.

5 COMM. PIGOTT: -- on your screen?

6 You can? Good.

7 Okay. So, this is -- this is available on
8 our Web site. It's a story map. You know, the
9 White River is a long and winding river. It goes
10 through the heart of Indiana, and it's important,
11 because it's -- it goes through many streams -- I
12 mean many urban centers in the city, and it's in
13 rural areas.

14 Our staff decided that they wanted to go
15 out and assess the conditions of the West Fork of
16 the White River, and the White River from its
17 headwaters to the Wabash River. You can look at
18 this project. The White River Mainstem Project
19 is at our Web site, and I'm going to give you
20 just a short look at what you'll see if you take
21 a look at this.

22 We entered into a massive project to help
23 investigate: What does the White River look like

1 today? The White River is 356 miles. It goes
2 through urban areas and rural areas, areas that
3 look like this, which are beautiful, and areas
4 that are, frankly, much more urban, and you see
5 all sorts of wildlife around there.

6 Let me just show you a couple of the lo --
7 some of the locations that we looked at. You can
8 see on this map the -- all of the red is
9 essentially the White River, and when I place my
10 cursor over this map, you can see indicators pop
11 up. All of those indicators are places where the
12 agency sampled to try to get an understanding of
13 what the health of the White River looks like
14 today.

15 And if you visit the Web site and take a
16 look at this, you can see pictures of the places
17 we sampled, and they're on the left-hand part of
18 the screen, and you can click on them, and it'll
19 show you where we sampled, what it looks like
20 from an aerial perspective, and what it looks
21 like on the ground.

22 It's -- whoops. Darn it. It's a really
23 great story map that shows the work that our

1 folks did to determine what water quality looks
2 like in the White River. And we sampled at
3 hundreds of locations. We sampled taking samples
4 of the water, we collected fish with shocking, we
5 looked at mackerel invertebrates, we conducted
6 outreach events, and we've put it all on the Web
7 site, all of the work that our folks did to look
8 at the water quality in the White River.

9 And I would just urge you, if you get a
10 minute, to take a look at this Web site and --
11 because it's really useful. It highlights the
12 quality and how the work that has been done by
13 the Department of Natural Resources and IDEM has
14 actively restored the river and made the river
15 once again a vibrant place.

16 It shows where we conducted our sampling
17 that -- both in urban areas and in the rural
18 areas in terms of shocking fish. This is a
19 picture of a boat that we used in the areas. We
20 did electro-fishing, where you put electricity in
21 the water and grab the fish with nets, and the
22 different kinds of fish we collected.

23 This project is currently still underway.

1 We collected 17,230 fish, 94 species, and you can
2 see, if you look at the map, the different kinds
3 of fish that were collected at the different
4 sites, and what we would consider the health of
5 the areas that we sampled, because it's a diverse
6 area with a variety of different kinds of fish.

7 You can see that some areas -- and you can
8 see the map. It's really intuitive. A red dot
9 would indicate that we think that the health of
10 the river at that place may be impacted, that
11 maybe you didn't see a wide variety of fish
12 populations. A green dot would be pretty darn
13 good, and a blue dot is even better.

14 And we measured that by the variety of
15 species and methodologies that we used, including
16 an index of biological integrity. And we
17 measured the water quality by looking at water
18 chemistry in those areas as well. This effort
19 was taken -- undertaken by the staff. It was
20 undertaken as a result of scientific curiosity
21 about how have we fared since the White River
22 Fish Kill, and how have we done in terms of
23 restoring the quality of the river?

1 And I'm really proud of the staff.
2 They've done not only a great job of getting out
3 there and collecting this information by going
4 out into the streams, but also of putting this in
5 a format that is easy to view, is basically
6 understandable by the general public, and
7 provides people with a good sense of what the
8 river looks like, both pictorially and in a
9 narrative format.

10 So, I just want to say that if you get a
11 chance, you should take a look at this. I don't
12 want -- I could go on and on about this, but I
13 don't -- I don't have all day to talk about it,
14 but our staff were out there in the field looking
15 at these -- the water quality. And the Web site
16 explains what we did in a way that is easy to
17 understand and, I think, very valuable.

18 So, again, I would urge you all to take a
19 look at the story -- we call it a story map --
20 that contains information about the White River
21 Mainstem Project. It's a wonderful effort by our
22 staff, and I'm just really pleased with their --
23 the work that was done.

1 Joanne, you had raised your hand, and I
2 wanted to be able to answer your question.

3 DR. ALEXANDROVICH: Thank you, Bruno.
4 That is a really neat study, it sounds like. I
5 look forward to checking out the Web site, but I
6 have three questions. I'm wondering how many --
7 are there CSO's on the White River that were
8 studied? Does any of the data that's been
9 collected -- can that shed light on our question
10 of the recreational water quality criteria? And
11 my third is: How long -- how much time was put
12 into this? How long did the study take?

13 COMM. PIGOTT: Oh, geez. You know, I
14 don't have the answer in terms of how long this
15 study took. It was -- although Eileen Hack is
16 on.

17 Eileen, I don't know if you can turn on
18 your microphone, but if you can and you can
19 answer that question.

20 It was during 2020, but -- and it may have
21 taken all summer long, but I don't know if it was
22 even before that.

23 Eileen, are you there and able to answer

1 that?

2 MS. HACK: I am, and I believe that
3 started in the spring. I know they went through
4 October. So, there were -- they collected water
5 chemistry samples in the spring, summer and fall,
6 and then some of the fish samples were collected
7 towards the August/September/October area, and
8 then they also collected aquatic insect samples.
9 So, it was a pretty intensive effort from the
10 spring through really, I think, almost the end of
11 October.

12 COMM. PIGOTT: The -- the project did
13 collect water chemistry, and -- but when I talked
14 to staff, they had not finished evaluating the
15 water chemistry. So, it was a project where you
16 take just a ton of samples, and then we don't
17 have a real read yet on the water chemistry
18 aspect of this in terms of what it looked like.

19 It's easier, of course, to understand what
20 kind of fish you can collect, and you get some
21 immediate feedback when you're out in the field,
22 but the water chemistry will take some time to
23 evaluate. So, I'm not sure that we can make any

1 conclusions about the water chemistry that would
2 assist in terms of the 2012 rec criteria.

3 I will say I'd expect that E. Coli levels
4 would be lower, despite the fact that the
5 sampling ran through different areas of very
6 large communities that are under federal consent
7 decrees, including Indianapolis. If I remember
8 correctly, one of the sampling locations was
9 right on New York Street, and therefore -- and
10 I'm trying to pick it up. There is a picture of
11 it on the screen now.

12 And so, it wound its way through different
13 areas that did include areas impacted or
14 downstream of CSO's. I think this site -- no,
15 that's New York Street again. It may have
16 actually -- maybe it's not New York Street, but
17 one below it, where it was awfully close to
18 discharge points along CSO's in a wastewater
19 treatment facility. At least that was my
20 recollection when I saw the sampling points
21 earlier.

22 So, yes, we -- oh, Harding Street, that's
23 the one. You know, I'll bet that's really close

1 to the outfall for the main wastewater treatment
2 plant. Now, of course, the other sampling
3 locations also, you know, have been influenced by
4 CSO discharges. In Indianapolis, for example,
5 there are about 144 CSO outfalls, and in Anderson
6 and in Muncie there are CSO outfalls as well, and
7 all of that travels downstream.

8 So, it's inevitable that the water
9 chemistry samples we took would capture levels of
10 pollutants that could be influenced by CSO's.
11 But we don't have complete data in terms of what
12 that could tell us for especially the rec
13 criteria. A very good question, though.

14 Thank you.

15 CHAIRMAN GARD: Bruno, that was just
16 fascinating. Thank you for showing us that. How
17 many years do you think it took the river to get
18 to the point that the wildlife was coming back?

19 COMM. PIGOTT: Well, you know, I
20 don't have a quick answer to that. You know,
21 Nancy's worked very closely with Beth Admire, and
22 I know that over the years and since the
23 settlement with the Department of Justice and the

1 funds that came in, we did spend at least a
2 decade improving that water body, if not more.

3 And Nancy, do you have any kind of idea of
4 how long before we saw results, from your
5 conversations with Beth or DNR, in this regard?

6 MS. KING: Yeah. Actually, I think
7 Beth is on, and I think she --

8 COMM. PIGOTT: Oh, good.

9 MS. KING: -- could provide some more
10 accurate information. She was the trustee who
11 worked on it a little more than I did back then.

12 So, I think, Beth, if you're on, if you
13 could give some information on that, that would
14 be great.

15 COMM. PIGOTT: Hey, Beth.

16 MS. ADMIRE: Hey. Hi, everybody.

17 Beth Admire talking.

18 The -- after the White River Fish Kill
19 settlement, we restocked a number of fish in the
20 White River. We revisited our restocking effort
21 at five and ten years, and it really was making a
22 good bit of difference in the river. Obviously
23 the City of Indianapolis, the Clean River

1 Authority Now undertook a pretty lengthy combined
2 sewer overflow long-term control plan to abate
3 the combined sewer overflows in the White River,
4 so that is also assisting the recovery.

5 Interestingly, we initiated at IDEM, after
6 the White River Fish Kill, a series of White
7 River cleanups where a number of our employees
8 would go out into the river and just pick up
9 trash. That has continued not only at IDEM, but
10 all along the river for years and years. I
11 actually just received a newspaper article last
12 year where a football team did a river cleanup as
13 part of its community service.

14 COMM. PIGOTT: Yeah, that -- it's
15 been a really -- a really great effort, and, you
16 know, the credit goes to a whole bunch of people.
17 We've worked in concert with DNR.

18 Beth, do you want to talk about some of
19 the folks at DNR that have worked on this with
20 us?

21 MS. ADMIRE: Sure.

22 Well, Bill James was one of the primary
23 people to work on this. A couple of the folks

1 have retired, Bill James. John Davis just
2 recently retired.

3 Carl Woodridge, who is the Natural
4 Resource Damages Program Manager at DNR, was
5 actually at IDEM, and -- initially -- and started
6 working on the White River restoration with us,
7 and he's now over at DNR. So, there has been a
8 really large co-agency effort, if you will, in
9 the White River.

10 COMM. PIGOTT: Yeah, and it's been
11 terrific. And not only have we increased the
12 fish population through the restocking efforts,
13 not only have we tried to restore habitat, but
14 we've also tried to increase the recreational
15 opportunities for individuals. I believe you
16 guys have put in boat ramps throughout the area.

17 And so, the effort has been really
18 multifactorial and has been really quite
19 successful, and I think that the White River
20 Mainstem Assessment Project will highlight just
21 how resilient the river has been despite a really
22 huge environmental impact.

23 But it needed help, and it got it. It got

1 it from devoted public servants like Beth and
2 Carl and a whole bunch of people who spent time
3 and NRD money to ensure that we restored the
4 river.

5 And I'm just so excited about the progress
6 we're going to make because of the work that the
7 Citizens Energy and the Cities of Muncie and
8 Anderson are doing to reduce their CSO overflows
9 dramatically. And that will have such a huge
10 impact on the river. Just a real success story,
11 I will say.

12 So, Beth, thanks to you, thanks to all of
13 our partners for that work, and the Watershed
14 Assessment and Planning Branch, thank you guys
15 for all of the work you've done to conduct this
16 assessment and not only make it a scientific
17 endeavor, but something that the public can visit
18 and see and understand.

19 We're also doing outreach events. I think
20 we're doing an outreach event in February for
21 this project as well. So, we're trying to get
22 the word out regarding our project and let people
23 know where they can go to see what the river

1 looks like. Our next -- our next -- let's see.
2 Oh, it looks like our next outreach event --
3 well, we had one in February, February 4th, it
4 looks like.

5 July 17th we're going to have a Free
6 Paddle Friday and White River Alliance Annual
7 Meeting at the White River Canoe Company. We're
8 just working with as many partners as possible to
9 ensure that we have, you know, increased
10 awareness of the success of this project.

11 So, I really wanted to bring that news to
12 you folks on the Board, because oh so often we
13 talk about the rules, but we -- or we talk about,
14 you know, stuff like permits, but we don't get to
15 see some of the progress that we make in other
16 areas in our agency and with our partners in
17 other agencies. So, that was the second thing I
18 wanted to bring up.

19 The third thing I want to talk about, and
20 then I'll excuse myself from talking, is the
21 legislative session. Now, there's one bill that
22 IDEM has -- has been interested in. It's --
23 we -- in every session, we generally have some

1 proposed legislation, and this year is no
2 exception.

3 It's some very minor -- very minor
4 adjustments to the laws that we were seeking in
5 our agency legislation, one of which is we have a
6 program where we verify tax exemptions for
7 industries that are -- that are putting in place
8 pollution control equipment, especially for water
9 quality.

10 And we really don't think the agency
11 should be in the tax exemption business, so we're
12 seeking to extract the agency from that process,
13 although we'd be happy to be consulted if
14 necessary, if there is the need.

15 One of the things we're working on is
16 rules regarding fees, and you'll see, as we come
17 up through the year, proposals for fee increases
18 in the Office of Water Quality and the Office of
19 Land Quality. The legislature, of course, as you
20 know, allowed the Environmental Rules Board to
21 approve the increases for the Department of
22 Environmental Management. We, as you will
23 remember, proposed the increases for the Office

1 of Air Quality, which were approved, and we'll
2 come forward for Water as well.

3 We have a deadline for getting that done
4 of early next year, and given the pace of our
5 rulemakings and the required number of public
6 hearings and the input and the importance of this
7 project, we're seeking to push that deadline back
8 a year so that we can have the appropriate input,
9 and so that you folks have the appropriate
10 ability to consider what we're asking for in
11 terms of fee increases.

12 So, that bill was introduced by
13 Sen. Messmer, the Chair of the Senate Environment
14 Committee, and it did not include the fee
15 increase -- I mean the deadline for fee increase
16 submissions being pushed back, but it did have
17 the other provisions. It passed through the
18 Senate and will be considered in the House. And
19 so, we're hoping that that goes through.

20 The other bill that we're really watching
21 is Senate Bill 389. Senate Bill 389 was
22 introduced by Sen. Garten and was heard in
23 Sen. Messmer's Environment Committee. This bill

1 is a fairly simple bill. It simply removes IDEM
2 from the ability to protect wetlands that are not
3 protected under federal law.

4 Currently -- I mean in the early 2000's,
5 the Supreme Court, in a decision called the Swank
6 Decision, limited the jurisdiction of the U.S.
7 Army Corps of Engineers over wetlands to water
8 bodies that were abutting -- or wetlands that
9 abutted waters of the United States, and the
10 other wetlands, which aren't any different in
11 function or performance, were left unprotected.

12 Foresighted legislators passed a law that
13 allowed IDEM to protect those other state
14 wetlands, and we've operated a state wetland
15 program. We call it an isolated wetland program,
16 although the wetlands couldn't be really defined
17 as all isolated, but it just described their
18 distance from a navigable water body.

19 But IDEM has the authority currently,
20 under law, to protect all of those wetlands, and
21 this bill would eliminate the protection of those
22 wetlands. And it was heard in the House -- I
23 mean in the Senate. It passed the Senate

1 Environment Committee, it was heard in the full
2 Senate, and passed out of the full Senate and
3 will be considered in the House of
4 Representatives.

5 We testified against the bill. We believe
6 that wetlands are important. One of the stories
7 that you may remember is the story of the Grand
8 Kankakee Marsh. A hundred years ago -- a hundred
9 years ago almost exactly -- the Grand Kankakee
10 Marsh was the second-largest wetlands in the
11 United States, and it stretched from South Bend
12 all of the way to Illinois and into Illinois.

13 And that wetland area did make it hard for
14 transportation routes and for farming, and as a
15 result, the State of Indiana decided to invest
16 money to drain those wetlands and to straighten
17 and channelize the Kankakee River, which
18 stretched for 240 miles and was really sinuous;
19 it had over 2,000 bends and curves in it. It was
20 straightened out and became a river that was
21 about 80 miles instead of 240 river miles long.
22 It was deepened.

23 And while the -- that effort helped to

1 ensure that more farmland was created, it also
2 had some negative consequences. Almost
3 immediately it resulted in flooding in that area,
4 and flooding that has existing now for a hundred
5 years.

6 And ever since that time, the state has
7 invested money to try to increase the number of
8 flood plains and expand the number of wetlands
9 that exist in that area, because wetlands and
10 flood plains help to store the water and reduce
11 flooding, and that's one of the huge economic
12 consequences of impacting our wetlands is the
13 loss of the ability to control flooding.

14 And so, one of the big arguments that
15 we've got about removing protections for these
16 wetlands that are not protected under the federal
17 law is to consider the economic benefit that the
18 wetlands provide. There certainly are stories
19 that some of the wetlands that we are charged
20 with protecting are mere wet spots in farm
21 fields, but most of the time that's just not the
22 case.

23 And we're finding that the wetlands that

1 we do protect help provide resources not only for
2 preventing flooding, but also recharging our
3 groundwater aquifers, filtering pollutants out,
4 and ensuring that most of our drinking water
5 systems -- most of them are -- get their water
6 from the ground -- are able to get safe and clean
7 water to the residents in the State of Indiana.

8 We've testified against the legislation,
9 and so has the Department of Natural Resources.
10 The Governor's expressed concern about this
11 legislation, and we will be meeting with members
12 of the House Environment Committee and folks to
13 talk about how we might address concerns that
14 some people have raised, and transform this
15 legislation into something that is -- actually
16 improves the program instead of eliminating the
17 program. And so, that's -- that's the big bill
18 that we're looking at today.

19 And that's my report, Sen. Gard, and I'm
20 happy to answer any questions.

21 CHAIRMAN GARD: Yes.

22 Are there any questions? Joanne has her
23 hand up, and I -- afterwards, then, I want to

1 make some comments about the wetlands bill as
2 well.

3 DR. ALEXANDROVICH: Thanks, Chairman
4 Gard.

5 Bruno, do you have any -- can you give us
6 a rough estimate of how many acres would no
7 longer be protected and how that compares to what
8 will remain protected?

9 COMM. PIGOTT: Yes, we do. I believe
10 about 80 -- so -- and I don't have the figures in
11 front of me, but we do have them, and I would
12 just say that of the remaining wetlands in the
13 state, about 85 percent of them would be our --
14 protected under our current state law, and the
15 remainder under the federal law.

16 So, by eliminating the protection of
17 this -- eliminating this law, we lose the
18 protection of the vast majority of wetlands that
19 exist today. And now, to get more precise
20 figures, I'll -- and we're happy to do so. We'll
21 get our folks to provide that. And I know we've
22 been -- we've got that information. I just don't
23 have it right in front of me.

1 CHAIRMAN GARD: Anyone else have a
2 question?

3 (No response.)

4 CHAIRMAN GARD: Bruno, thank you for
5 giving that report on the legislature.

6 And I want to make a couple of comments
7 about Senate Bill 389. I am really concerned if
8 this bill passes. I've just been really
9 concerned about it. I was the lead sponsor on
10 the bill. Rep. Wolkins -- it was a House Bill --
11 he was the author of the bill, and this -- we
12 worked hard for a long time on this bill. It
13 wasn't something that was just thrown together
14 before a session.

15 We -- back then we had the Environmental
16 Quality Service Council, and we spent some time
17 during the summer studying the issue. The Swank
18 Decision had not been out for too long. You
19 needed to understand that before you could really
20 delve into this. This is really very complicated
21 when you get into it. It's not -- it's not easy.

22 These isolated wetlands now, there are
23 various classifications of those wetlands,

1 depending on a number of things, but a lot of the
2 legislators -- well, very few of them were around
3 at the Swank Decision, and most of them don't
4 have any idea what the Swank Decision says or
5 does and the relationship there.

6 So, if any of you know any of these House
7 members very well and have some influence, I
8 think it's appropriate to talk to them about it,
9 but I am really concerned about it.

10 Before I lose my voice, let me call on
11 Chris Pedersen for the Rulemaking Report.

12 MS. PEDERSEN: Good afternoon. I'm
13 Chris Pedersen, in the Rules Development Branch
14 of the Office of Legal Counsel.

15 The next Board meeting is tentatively
16 scheduled for May 12th, 2021, and it will also be
17 a Zoom meeting. At that meeting, we anticipate
18 presenting two final adoption and three
19 preliminarily -- preliminary adoption
20 rulemakings.

21 The NOx Emissions Monitoring Rule was
22 preliminarily adopted in November, and that rule
23 revises the existing monitoring and reporting

1 requirements for certain large fossil fuel
2 boilers to add an alternative for monitoring and
3 reporting of NOx emissions that is consistent with
4 the federal requirements.

5 Also the Metals Criteria rulemaking. That
6 was also preliminarily adopted in November. This
7 rule revises Indiana's aquatic life and human
8 health ambient water quality criteria for certain
9 metals. It's based on federal recommendations
10 and current science. Some proposed criteria
11 would be more stringent and some less stringent
12 than the current criteria. This rule is getting
13 ready to go into a comment period, and so, the
14 schedule of the rulemaking is dependent on the
15 number and complexity of the comments that are
16 received.

17 For preliminary adoption, the Solid Waste
18 Financial Assurance rulemaking is scheduled for
19 May, and that rule revises the financial
20 assurance requirements for solid waste facilities
21 to provide compliance flexibility and to improve
22 the administration of the final assurance
23 requirements. It also resolves inconsistencies

1 across financial assurance requirements for
2 various waste programs.

3 The Satellite Manure Storage Structure
4 Reference Updates rulemaking. It updates
5 references to the Natural Resources Conservation
6 Service Standards for the design and construction
7 of satellite manure storage structures to be
8 consistent with the standards for similar
9 structures at confined feeding operations.

10 And finally, the BP Temporary Alternative
11 Opacity Limitations Rule. This establishes a
12 temporary alternative opacity limitation for the
13 BP Whiting Refinery in Lake County, at the
14 request of the company. The alternative limits
15 are requested to reduce the risk for explosions
16 from emissions passing through electrostatic
17 precipitators during startup, shutdown and hot
18 standby events.

19 And that is my update on upcoming rules.
20 I'll be happy to answer any questions about the
21 agency rulemakings or schedules.

22 CHAIRMAN GARD: Are there any
23 questions for Chris on rulemaking?

1 (No response.)

2 CHAIRMAN GARD: If not, thank you,
3 Chris.

4 Today we will have hearings and Board
5 action on final adoption of the following rules:
6 Cold Cleaning Degreasing Alternative, Hazardous
7 Waste Financial Assurance, and Vertellus
8 Particulate Matter Revisions. I'm not
9 pronouncing that right at all.

10 After Board action on the rules, there
11 will be a Board discussion of the hearing on the
12 citizens petition that we held on October 28th.

13 The rules being considered at today's
14 meeting were included in the Board packet and are
15 available for public inspection on the IDEM Web
16 site at least one week prior to each of the Board
17 meetings.

18 A written transcript of today's meeting
19 will be made. The transcript and any written
20 submissions will be open for public inspection at
21 the Office of Legal Counsel. A copy of the
22 transcript will be posted on the Rules page of
23 the agency Web site when it becomes available.

1 Now we'll move on to the public hearing.
2 This is a public hearing before the Environmental
3 Rules Board of the State of Indiana concerning
4 final adoption of amendments to rules at
5 326 IAC 8-3, Cold Cleaning Degreasing Alternative
6 Rules. The proposed rule as preliminarily
7 adopted found in today's Board packet is entered
8 into the record of the hearing.

9 Keelyn Walsh will present the rules to the
10 Board.

11 MS. WALSH: Good afternoon, members
12 of the Board. I'm Keelyn Walsh, with the Rules
13 Development Section of the Office of Legal
14 Counsel, and I'm presenting Rule No. 18-542, Cold
15 Cleaning Degreasing Alternative, for your
16 consideration.

17 Cold cleaning is one of four types of
18 degreasing operations in which industrial sources
19 dip or spray machinery parts with a solvent.
20 Indiana's current state rule at 326 IAC 8-3-8
21 requires sources operating cold cleaner
22 degreasers to utilize a low vapor pressure
23 solvent for cleaning or degreasing machine parts.

1 The current rule does not provide an option for
2 sources to use a higher vapor pressure solvent
3 with a control device.

4 IDEM is proposing to amend 326 IAC 8-3-1,
5 8-3-2, 8-3-3, 8-3-4, and 8-3-8 to allow for the
6 use of an alternative control device for solvents
7 with a higher vapor pressure, in order to control
8 emissions from cold cleaning degreasing
9 activities for users currently required to use a
10 low vapor pressure solvent to comply with the
11 state rule. These amendments are consistent with
12 U.S. EPA regulations and will ensure smoother and
13 more efficient operations for industrial sources
14 in the state.

15 This rule is being presented again for
16 final adoption because the proposed rule
17 published in the Indiana Register on
18 January 22nd, 2020, unintentionally omitted
19 several comments that were received during the
20 second notice of comment period. A new proposed
21 rule was published in the Register on
22 January 6th, 2021 that contains the comments
23 received during the second notice of comment

1 period. The comments and responses were included
2 in the Board packet for the preliminary adoption
3 hearing on January 8, 2020, and the draft rule
4 included all of the changes related to those
5 comments.

6 IDEM requests that the Board final adopt
7 this rule as presented, and program staff are
8 available to answer any further questions you may
9 have.

10 Thank you.

11 CHAIRMAN GARD: Are there any
12 questions for Keelyn or anybody else on this
13 rule?

14 (No response.)

15 CHAIRMAN GARD: Thank you, Keelyn.

16 MS. WALSH: Uh-huh.

17 CHAIRMAN GARD: Who has signed up to
18 speak on the rule?

19 (No response.)

20 CHAIRMAN GARD: No one? Okay. The
21 Board will now consider final adoption of
22 amendments to 326 IAC 8-3, Cold Clean -- Cold
23 Cleaner Degreasing Alternative Rules. Is there

1 any Board discussion?

2 (No response.)

3 CHAIRMAN GARD: Is there a motion to
4 final adopt IDEM's proposed rules as presented?

5 MR. DAVIDSON: So moved, Calvin.

6 CHAIRMAN GARD: Is there a second?

7 MS. NELSON: Moved, Katie.

8 CHAIRMAN GARD: I'll call the roll.
9 Mr. Etzler?

10 MR. ETZLER: Yes.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 DR. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Mr. Bortner?

14 MR. BORTNER: Yes.

15 CHAIRMAN GARD: Ms. Collier?

16 MS. COLLIER: Yes.

17 CHAIRMAN GARD: Mr. Davidson?

18 MR. DAVIDSON: Yes.

19 CHAIRMAN GARD: Mr. Gilson?

20 MR. GILSON: Yes.

21 CHAIRMAN GARD: Mr. Green?

22 MR. GREEN: Yes.

23 CHAIRMAN GARD: Mr. Horn?

1 (No response.)

2 CHAIRMAN GARD: Ms. Nelson?

3 MS. NELSON: Yes.

4 CHAIRMAN GARD: Dr. Niemiec?

5 (No response.)

6 CHAIRMAN GARD: Mr. Rulon?

7 (No response.)

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Ms. Valiquett?

11 (No response.)

12 CHAIRMAN GARD: Mr. Wasky?

13 MR. WASKY: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 The rule is adopted with 12 ayes and zero nays.

16 This is a public hearing before the
17 Environmental Rules Board of the State of Indiana
18 concerning final adoption of amendments to rules
19 at 329 IAC 3.1-14 and 329 IAC 3.1-15, Hazardous
20 Waste Financial Assurance Rules. The proposed
21 rules as preliminarily adopted with IDEM's
22 suggested changes incorporated found in today's
23 Board packet is entered into the record of the

1 hearing.

2 Dan Watts will present the rule to the
3 Board.

4 Dan?

5 MR. WATTS: Good afternoon, members
6 of the Board. I'm Dan Watts of the Rules
7 Development Branch. I'm presenting LSA
8 Document 14-287 for final adoption. This
9 rulemaking makes vital updates and corrections to
10 address longstanding issues in the Hazardous
11 Waste Financial Assurance Rules at 329 IAC 3.1-14
12 and 3.1-15.

13 The main amendments in the rulemaking
14 include adding specific financial assurance
15 requirements for hazardous waste facilities
16 subject to corrective action, making corrections
17 to the wording of the financial assurance forms,
18 updating rule language to comport with current
19 rules drafting standards, and making any other
20 needed changes or corrections observed in the
21 rule language.

22 Since the preliminary adoption of the
23 rulemaking, changes to the rule proposed for

1 final adoption have been limited to typographical
2 and formatting errors or rephrasing of rule
3 language based on LSA recommendations. An
4 example is replacing the legacy phrase "pursuant
5 to" with the more accurate "in accordance with."

6 In addition, based on comments received
7 during the preliminary adoption hearing -- or
8 more so a suggestion received during that
9 hearing -- the usages of "insurer" versus
10 "insured" were examined in the proposed rule
11 language, and IDEM did not find any additional
12 instances in which the terms were used
13 incorrectly.

14 Lastly, during the third comment period
15 held between preliminary and final adoption, no
16 comments were received.

17 Representatives from IDEM are available to
18 answer any questions that you may have for this
19 rulemaking. The Department requests that the
20 Board adopt this rule so IDEM can move forward
21 with these vital updates to the Hazardous Waste
22 Financial Assurance Rules.

23 Thank you.

1 CHAIRMAN GARD: Thank you, Dan.

2 Are there any questions for Dan or any of
3 the other IDEM people that are present?

4 (No response.)

5 CHAIRMAN GARD: If not, is there
6 anybody that is signed up to speak on this -- on
7 this final adoption?

8 (No response.)

9 CHAIRMAN GARD: Okay. With that, the
10 hearing is concluded. The Board will now
11 consider final adoption of amendments to
12 326 IAC 3-1 -- 3.1-14 and 329 IAC 3.1-15,
13 Hazardous Waste Financial Assurance Rules. Any
14 Board discussion?

15 (No response.)

16 CHAIRMAN GARD: Do I hear a motion to
17 adopt IDEM's suggested changes to the rule?

18 MR. ETZLER: I'll move --

19 CHAIRMAN GARD: Is there a second?

20 MR. ETZLER: -- Bill Etzler.

21 CHAIRMAN GARD: I'm going to call the
22 roll.

23 Mr. Etzler?

1 MR. ETZLER: Yes.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Yes.

4 CHAIRMAN GARD: Mr. Bortner?

5 MR. BORTNER: Yes.

6 CHAIRMAN GARD: Ms. Collier?

7 MS. COLLIER: Yes.

8 CHAIRMAN GARD: Mr. Davidson?

9 MR. DAVIDSON: Yes.

10 CHAIRMAN GARD: Mr. Gilson?

11 MR. GILSON: Yes.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Yes.

14 CHAIRMAN GARD: Mr. Horn?

15 (No response.)

16 CHAIRMAN GARD: Ms. Nelson?

17 MS. NELSON: Yes.

18 CHAIRMAN GARD: Dr. Niemiec?

19 DR. NIEMIEC: Yes.

20 CHAIRMAN GARD: Mr. Rulon?

21 (No response.)

22 CHAIRMAN GARD: Mr. Schuler?

23 MR. SCHULER: Yes.

1 CHAIRMAN GARD: Ms. Valiquett?

2 (No response.)

3 CHAIRMAN GARD: Ms. Valiquett?

4 (No response.)

5 CHAIRMAN GARD: Mr. Wasky?

6 MR. WASKY: Yes.

7 CHAIRMAN GARD: The Chair votes aye.

8 The vote is 12 ayes, zero nays. The changes are
9 adopted.

10 Is there a motion to adopt Indiana's
11 proposed rule as amended? We need a --

12 MR. ETZLER: So moved, Bill Etzler.

13 CHAIRMAN GARD: Is there a second?

14 MR. GREEN: Second, R. T. Green.

15 CHAIRMAN GARD: I'll call the roll.

16 Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Dr. Alexandrovich?

19 DR. ALEXANDROVICH: Yes.

20 CHAIRMAN GARD: Mr. Bortner?

21 MR. BORTNER: Yes.

22 CHAIRMAN GARD: Ms. Collier?

23 MS. COLLIER: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Gilson?

4 MR. GILSON: Yes.

5 CHAIRMAN GARD: Mr. Green?

6 MR. GREEN: Yes.

7 CHAIRMAN GARD: Ms. Nelson?

8 MS. NELSON: Yes.

9 CHAIRMAN GARD: Dr. Niemiec?

10 DR. NIEMIEC: Yes.

11 CHAIRMAN GARD: Mr. Schuler?

12 MR. SCHULER: Yes.

13 CHAIRMAN GARD: Ms. Valiquett?

14 (No response.)

15 CHAIRMAN GARD: Mr. Wasky?

16 MR. WASKY: Yes.

17 CHAIRMAN GARD: And the Chair votes

18 aye. The proposed rule is adopted 12 to zero.

19 Okay. This is a public hearing before the
20 Environmental Rules Board of the State of Indiana
21 concerning final adoption of amendments to rules
22 at 326 IAC 6.5-6-31, Vertellus Particulate Matter
23 Revisions. The proposed rule as preliminarily

1 adopted and found in today's Board packet is
2 entered into the record of the hearing.

3 Keelyn Walsh will present the rule to the
4 Board.

5 MS. WALSH: Hello again. I'm Keelyn
6 Walsh, and I'm presenting Rule No. 19-82,
7 Vertellus Emission Limits Updates, for your
8 consideration.

9 Vertellus is a chemical manufacturing
10 company in Indianapolis, Indiana, and has
11 requested revisions to its particulate matter
12 emission limits listed at 326 IAC 6.5-6-31.
13 These revisions remove units that are no longer
14 operating or have been demolished at the
15 facility, make changes to particulate matter
16 emission limits on other units impacted by
17 U.S. EPA's recently adopted sulfur dioxide limits
18 at 326 IAC 7-4-2.1(a)(4), update existing
19 language, and add new language pertaining to the
20 types of gases burned in certain units.

21 Marion County's one-hour SO2 monitoring
22 data was found to exceed the one-hour National
23 Ambient Air Quality Standard of 75 parts per

1 billion for the period between 2010 through 2012,
2 and the county was consequently designated as
3 nonattainment by U.S. EPA. The 2010 one-hour SO2
4 limits were incorporated into Indiana's State
5 Implementation Plan on January 1st, 2017, and
6 therefore revisions are required for some sources
7 listed at 326 IAC 7-4-2.1 in order to demonstrate
8 attainment of the new one-hour SO2 standard.

9 Additionally, petroleum oil was burned at
10 several Vertellus units, which helped contribute
11 to monitored violations of the one-hour SO2
12 standard in Marion County. These units have
13 since switched to burning natural gas, which
14 reduces SO2 emissions and allows Vertellus to
15 remain in compliance with its revised SO2 limits
16 to ensure continued attainment of the one-hour SO2
17 standard. Revisions to the particulate matter
18 emission limits at 326 IAC 6.5-6-31 are needed
19 for consistency with the process changes that
20 Vertellus has made to comply with the new SO2
21 standards.

22 Finally, language is being added at
23 326 IAC 6.5-6-31(b)(2) to indicate that certain

1 units burn both natural and landfill gases.
2 Increases in several emission limits represent
3 adjustments in the potential amount of natural
4 gas a unit can burn rather than the actual amount
5 of gas burned, and modeling has shown no
6 increased emission concentrations at the modeled
7 receptors.

8 Vertellus anticipates that switching from
9 petroleum fuels to natural gas, as well as
10 reducing the amount of landfill gas burned, will
11 result in an emissions decrease of 14.1 tons per
12 year as compared to the amount currently listed
13 in Indiana's SIP, and allow the area to
14 demonstrate attainment of U.S. EPA's National
15 Ambient Air Quality Standards. Once the
16 revisions in this rulemaking are completed, IDEM
17 will submit the final rule to U.S. EPA as a SIP
18 revision.

19 IDEM requests that the Board final adopt
20 this rule as presented, and program staff are
21 available to answer any further questions you may
22 have.

23 Thanks.

1 CHAIRMAN GARD: Thank you.

2 Are there any questions for Keelyn or any
3 of the other staff?

4 (No response.)

5 CHAIRMAN GARD: Okay. Are there any
6 people that have signed up to speak?

7 (No response.)

8 CHAIRMAN GARD: Anybody not signed up
9 want to speak?

10 (No response.)

11 CHAIRMAN GARD: This hearing is
12 concluded. The Board will now consider final
13 adoption of amendments to 326 IAC 6.5-6-31,
14 Vertellus Particulate Matter Revisions. Is there
15 any Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Motion -- I need a
18 motion to final adopt IDEM's proposed rules as
19 presented.

20 MR. DAVIDSON: So moved, Calvin.

21 CHAIRMAN GARD: Is there a second?

22 MR. GREEN: R. T. Green, second.

23 CHAIRMAN GARD: Roll call.

1 Mr. Etzler?

2 MR. ETZLER: Yes.

3 CHAIRMAN GARD: Dr. Alexandrovich?

4 DR. ALEXANDROVICH: Yes.

5 CHAIRMAN GARD: Mr. Bortner?

6 MR. BORTNER: Yes.

7 CHAIRMAN GARD: Ms. Collier?

8 MS. COLLIER: Yes.

9 CHAIRMAN GARD: Mr. Davidson?

10 MR. DAVIDSON: Yes.

11 CHAIRMAN GARD: Mr. Gilson?

12 MR. GILSON: Yes.

13 CHAIRMAN GARD: Mr. Green?

14 MR. GREEN: Yes.

15 CHAIRMAN GARD: Ms. Nelson?

16 MS. NELSON: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Schuler?

20 MR. SCHULER: Yes.

21 CHAIRMAN GARD: Mr. Wasky?

22 MR. WASKY: Yes.

23 CHAIRMAN GARD: And the Chair votes

1 aye. The rule is final adopted 12 ayes, zero
2 nays.

3 Now we're going to go into the citizens
4 petition discussion. This will be an open
5 discussion on the citizens petition hearing that
6 was held on October the 24th of last year. Most
7 of our Board Members were able to attend, and
8 hopefully those that weren't have viewed the
9 hearing, which was placed on IDEM's Web site
10 shortly after the public hearing. Documents from
11 the hearing were included or were provided to
12 Board Members and were also placed on the Web
13 site.

14 As noted in the question list provided in
15 the Board packet, three sets of questions were
16 submitted. Recently -- shortly before the Board
17 packet was sent out, the Petitioners requested
18 additional time to respond in writing. When both
19 sides have completed their responses, they will
20 be provided to the Board, and we will continue
21 our discussions at the next Board meeting.

22 While we do not have the responses for the
23 discussion today, we have in the past generally

1 used this time to ask questions of those who have
2 testified and the agency. I know some Board
3 members may have additional questions for IDEM or
4 the Petitioners. Several of the Petitioners are
5 with us today, as well as agency technical staff,
6 to assist our discussion.

7 Could those of you speaking for the
8 Petitioners today please identify yourselves? Do
9 we know who's going to be speaking for the
10 Petitioners, if anybody?

11 Ryan, do you see anybody?

12 MR. CLEM: I do not, Chair Gard.

13 CHAIRMAN GARD: Okay.

14 MR. CLEM: Hold it; I'm sorry. We do
15 have -- Tim Healy has his hand up.

16 CHAIRMAN GARD: Yeah, I just -- his
17 hand just came up.

18 Okay. Martha, could you please introduce
19 the IDEM staff in the meeting today available to
20 answer questions?

21 MS. CLARK METTLER: Yeah, sure. So,
22 I'm Martha Clark Mettler. I'm the Assistant
23 Commissioner of the Office of Water Quality. I

1 want to take this opportunity to thank the Board
2 members who submitted questions. Our -- it's
3 obvious you've all been thinking about this, and
4 some of them are quite challenging and we're
5 working on getting responses, and I'm happy to
6 answer any other questions you have today.

7 We've got Paul Higginbotham, who is the
8 Deputy Assistant Commissioner, Office of Water
9 Quality, and Jerry Dittmer, who is the Chief of
10 our Permits Branch, and any of us can field
11 questions that you may have. And I just saw
12 Craig Williams' picture pop up, and he's one of
13 the lead spokespeople for the Petitioners, so I
14 thought I'd introduce him, too.

15 CHAIRMAN GARD: Okay. Thank you,
16 Martha.

17 During the testimony, we heard about the
18 discussion between IDEM and the Petitioners on
19 this subject in the past. I think it would be
20 beneficial for both sides to use the time between
21 now and the next meeting to share and discuss
22 their responses with their -- each other and work
23 on developing options for the Board to consider

1 what the next steps would be.

2 And I would -- I'd like to really
3 encourage the Petitioners to sit down with IDEM,
4 and it seemed to me that there was a process in
5 the statute, and I know that -- because we worked
6 on this for quite some time -- there was a
7 provision in there that I thought would take care
8 of the situation that you find yourself in now,
9 but it was a provision that essentially said when
10 you reach that point of really diminishing
11 returns based on your investment, you know,
12 you -- that was as far as you were expected to
13 go.

14 And I still don't understand why that
15 hasn't worked for you all. And, you know,
16 whether the process hasn't been followed
17 correctly or what the issue is, but I really
18 would like to know what there is in the current
19 statute that makes that unworkable.

20 Is there any more discussion from the
21 Board on this, questions that they want to ask?

22 MR. WILLIAMS: Chairwoman Gard, this
23 is Craig Williams. If I can speak to our efforts

1 to date.

2 CHAIRMAN GARD: Yes, please do.

3 MR. WILLIAMS: Thank you. First of
4 all, thank you, everybody, for the submission of
5 your questions.

6 As we were moving through them, we
7 realized that the -- we feel that our ask is
8 simple on its face. We're simply asking to find
9 the regulatory compliance that the '94 policy
10 provides, but the application of that is complex
11 and involves a lot of moving parts. And as we
12 began working through the questions that were
13 provided, we felt that we really needed to take
14 the time to dig into them and provide thorough
15 answers.

16 We are -- we are in the process of
17 reaching out to Paul and his crew to try to set
18 up maybe some calls or meetings in early March,
19 and as long as he and his staff are on board with
20 it, I think our desire is to try to get a single
21 document returned to the Rules Board with all of
22 the questions and our responses in one place.
23 That way it'll be, I think, easier to see

1 where -- where we come together, where we agree.

2 And the places where we may have some
3 differences, it might help provide us the ability
4 to sort of get a direction on where we need to
5 move going forward. So, we look forward to that,
6 and rest assured, we have -- we have been very
7 well received by these last however, six or seven
8 years, I think, that this has been a topic of
9 discussion, and as I think Paul alluded to at the
10 last meeting, we just sort of felt that we
11 couldn't find an appropriate way to get us to
12 that place of regulatory compliance or regulatory
13 certainty that we were seeking.

14 And we've brought on a couple of folks
15 that I think are going to help us find some
16 pathways to do that, so we look forward to
17 working with them all. And we just appreciate
18 your patience in this process.

19 CHAIRMAN GARD: Well, thank you,
20 Craig. We appreciate the time that you have put
21 in on this and are going to put in on this.
22 This -- as you alluded to, this is -- it seems
23 simple on the surface, but it's quite complicated

1 when you really get into the weeds. And, you
2 know, you still have water quality standards
3 you're going to have to meet, and so, you know,
4 the process you use to get there we're going to
5 have to talk about.

6 Is there -- are there any questions from
7 the Board for Mr. Williams or the other -- there
8 are two people with their hands up, and I can't
9 see -- oh, Dr. Alexandrovich, and then the other
10 one doesn't have a name.

11 MR. HIGGINBOTHAM: Paul Higginbotham
12 is the other one.

13 CHAIRMAN GARD: Okay. Thank you,
14 Paul.

15 Joanne, and then we'll get to Paul.

16 DR. ALEXANDROVICH: Thank you.

17 As many people might recognize, I'm never
18 short of questions. I just want to make sure to
19 ask Craig, because I did submit questions,
20 surprise, surprise, and Nancy asked me who to
21 direct the questions to, and I kind of went
22 through them and said, "This one was maybe for
23 IDEM, and this one was for the Petitioners."

1 So -- but, you know, I didn't want to
2 limit it to that. So, Craig, I just want to make
3 sure that you've gone through the whole set of
4 questions and you feel like you can speak to them
5 if you want to.

6 MR. WILLIAMS: Yeah. Thank you very
7 much. We are going through both sets of
8 questions, and, you know, there are some that are
9 just very obviously for the agency to answer, but
10 there are some that we think that we'd be able to
11 provide a little bit of insight to as well, and
12 so, we've received the whole list and we're
13 working through both sets. Thank you.

14 DR. ALEXANDROVICH: So, did I
15 understand you said that you and IDEM have agreed
16 that it'll be -- all of these responses are going
17 to be in one document --

18 MR. WILLIAMS: We are --

19 DR. ALEXANDROVICH: -- or you're
20 working on that?

21 MR. WILLIAMS: We'll be working with
22 Paul, and as long as Paul and his team are
23 amenable to that, that is our desire. We felt

1 that that may help. That way you're not trying
2 to refer to a bunch of different documents
3 that -- we thought that that might help bring a
4 little bit of congruity to the whole process,
5 yes.

6 DR. ALEXANDROVICH: And if you can
7 agree on an answer, that means at least you're on
8 the same page to start.

9 MR. WILLIAMS: Sure.

10 DR. ALEXANDROVICH: Thank you.

11 CHAIRMAN GARD: Paul?

12 MR. HIGGINBOTHAM: Thank you,
13 Chairwoman Gard.

14 I just wanted to kind of reiterate what
15 you had mentioned, as well as Craig, and yes, we
16 are more than willing to sit down with the
17 Petitioners and Craig and his folks, and that'd
18 actually probably be more beneficial for the
19 Board for us to do that, to have those
20 discussions and bring something back to you guys
21 at a future meeting.

22 That'll help us work through those issues
23 the best we can. I'm sure there may be spots

1 where we'll have to agree to disagree, but at
2 least we'll have those noted accordingly. But we
3 work well with these folks, and we'll continue to
4 do that to try to find some type of resolution
5 and move things forward.

6 CHAIRMAN GARD: Good. Thank you. We
7 appreciate that.

8 And I would -- I would really like an
9 answer as to why the current -- what we call
10 knee-of-the-curve provision in the current
11 statute isn't adequate for their situation, and
12 so, if -- if you make sure that that question's
13 answered during your deliberations, I'd
14 appreciate that.

15 Any other comments, questions for either
16 the Petitioners or IDEM staff?

17 (No response.)

18 CHAIRMAN GARD: No? Okay. Well, if
19 there aren't, we'll move on to Open Forum. Is
20 there anyone in the audience that would like
21 to --

22 (Telephone rang.)

23 CHAIRMAN GARD: I don't know if you

1 can hear that phone, but I could; sorry. Is
2 there anyone in the audience that would like to
3 speak? It's Open Forum.

4 (No response.)

5 CHAIRMAN GARD: I don't think so.

6 Well, the next meeting of the
7 Environmental Rules Board is tentatively set for
8 Wednesday, May 12th, 2021 at 1:30 p.m. The
9 meeting will be a remote meeting like today's.
10 The date is tentative and subject to change. We
11 will keep everyone updated when that is confirmed
12 or another date is chosen.

13 Is there a motion to adjourn?

14 (No response.)

15 CHAIRMAN GARD: Is there a motion
16 to --

17 DR. NIEMIEC: So moved. This is Ted
18 Niemiec.

19 CHAIRMAN GARD: Is there a second?

20 MR. GREEN: R. T. Green, second.

21 CHAIRMAN GARD: Okay. All in favor,
22 say aye.

23 (Board members responded, "Aye.")

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CHAIRMAN GARD: Opposed, nay.

(No response.)

CHAIRMAN GARD: We are adjourned.

You all be safe. It's snowing here now.

- - -

Thereupon, the proceedings of
February 10, 2021 were concluded
at 2:48 o'clock p.m.

- - -

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, February 10, 2021 in this matter
8 and transcribed by me.

9
10 _____
11 Lindy L. Meyer, Jr.,
12 Notary Public in and
13 for the State of Indiana.

14
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
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A	<p>Admire (5) 12:12;21:21;22:16, 17;23:21</p> <p>adopt (7) 41:6;42:4;45:20; 46:17;48:10;52:19; 53:18</p> <p>adopted (10) 35:22;36:6;39:7; 43:15,21;48:9;49:18; 50:1,17;55:1</p> <p>adoption (18) 35:18,19;36:17; 38:5;39:4;40:16; 41:2,21;43:18;44:8, 22;45:1,7,15;46:7,11; 49:21;53:13</p> <p>aerial (1) 14:20</p> <p>afternoon (3) 35:12;39:11;44:5</p> <p>afterwards (1) 32:23</p> <p>again (5) 15:15;17:18;20:15; 40:15;50:5</p> <p>against (2) 30:5;32:8</p> <p>agencies (1) 26:17</p> <p>agency (14) 7:23;10:17;12:1,3; 14:12;26:16;27:5,10, 12;37:21;38:23;56:2, 5;62:9</p> <p>ago (3) 11:10;30:8,9</p> <p>agree (3) 60:1;63:7;64:1</p> <p>agreed (1) 62:15</p> <p>air (7) 8:13;10:5,6,17; 28:1;50:23;52:15</p> <p>Alexandrovich (18) 3:15,16;18:3;33:3; 42:11,12;47:2,3; 48:18,19;54:3,4;61:9, 16;62:14,19;63:6,10</p> <p>Alliance (1) 26:6</p> <p>allocated (1) 8:16</p> <p>allow (2) 40:5;52:13</p> <p>allowed (3) 8:18;27:20;29:13</p> <p>allows (1) 51:14</p> <p>alluded (2) 60:9,22</p> <p>almost (3) 19:10;30:9;31:2</p>	<p>along (2) 20:18;23:10</p> <p>alternative (9) 36:2;37:10,12,14; 38:6;39:5,15;40:6; 41:23</p> <p>although (3) 18:15;27:13;29:16</p> <p>Ambient (4) 10:6;36:8;50:23; 52:15</p> <p>ambitious (1) 9:14</p> <p>amenable (1) 62:23</p> <p>amend (1) 40:4</p> <p>amended (1) 48:11</p> <p>amendments (8) 39:4;40:11;41:22; 43:18;44:13;46:11; 49:21;53:13</p> <p>amount (4) 52:3,4,10,12</p> <p>Anderson (4) 11:19,19;21:5;25:8</p> <p>Annual (1) 26:6</p> <p>answered (1) 64:13</p> <p>anticipate (1) 35:17</p> <p>anticipates (1) 52:8</p> <p>application (1) 59:10</p> <p>appreciate (6) 6:17;7:20;60:17, 20;64:7,14</p> <p>appropriate (5) 6:1;28:8,9;35:8; 60:11</p> <p>approval (1) 6:20</p> <p>approve (2) 7:2;27:21</p> <p>approved (2) 7:13;28:1</p> <p>aquatic (2) 19:8;36:7</p> <p>aquifers (1) 32:3</p> <p>area (7) 16:6;19:7;24:16; 30:13;31:3,9;52:13</p> <p>areas (16) 9:6;13:13;14:2,2,2, 3;15:17,18,19;16:5,7, 18;20:5,13,13;26:16</p> <p>arguments (1) 31:14</p> <p>Army (1)</p>	<p>29:7</p> <p>around (3) 11:2;14:5;35:2</p> <p>article (1) 23:11</p> <p>aspect (1) 19:18</p> <p>assess (1) 13:15</p> <p>Assessment (5) 12:15,23;24:20; 25:14,16</p> <p>assigned (1) 12:8</p> <p>assist (2) 20:2;56:6</p> <p>Assistant (2) 56:22;57:8</p> <p>assisting (1) 23:4</p> <p>associated (1) 12:10</p> <p>Assurance (11) 36:18,20,22;37:1; 38:7;43:20;44:11,14, 17;45:22;46:13</p> <p>assured (1) 60:6</p> <p>attached (1) 10:13</p> <p>attainment (4) 10:9;51:8,16;52:14</p> <p>attend (1) 55:7</p> <p>attendance (1) 7:20</p> <p>audience (2) 64:20;65:2</p> <p>August/September/October (1) 19:7</p> <p>author (1) 34:11</p> <p>Authority (2) 23:1;29:19</p> <p>available (7) 13:7;38:15,23; 41:8;45:17;52:21; 56:19</p> <p>average (2) 9:11,17</p> <p>awareness (1) 26:10</p> <p>awfully (1) 20:17</p> <p>aye (8) 7:8,9;43:14;48:7; 49:18;55:1;65:22,23</p> <p>eyes (3) 43:15;48:8;55:1</p>	<p>6:14;8:4,10;11:7; 21:18;22:11;28:7,16; 34:15;63:20</p> <p>based (4) 36:9;45:3,6;58:11</p> <p>basically (1) 17:5</p> <p>basis (1) 10:14</p> <p>bears (1) 11:7</p> <p>beautiful (1) 14:3</p> <p>became (1) 30:20</p> <p>become (1) 9:21</p> <p>becomes (1) 38:23</p> <p>began (1) 59:12</p> <p>below (1) 20:17</p> <p>Bend (1) 30:11</p> <p>bends (1) 30:19</p> <p>beneficial (2) 57:20;63:18</p> <p>benefit (1) 31:17</p> <p>best (1) 63:23</p> <p>bet (1) 20:23</p> <p>Beth (10) 12:12;21:21;22:5, 7,12,15,17;23:18; 25:1,12</p> <p>better (3) 10:7,7;16:13</p> <p>big (5) 8:7,19;9:12;31:14; 32:17</p> <p>biggest (1) 9:1</p> <p>Bill (22) 4:21;23:22;24:1; 26:21;28:12,20,21, 21,23;29:1,21;30:5; 32:17;33:1;34:7,8,10, 10,11,12;46:20;48:12</p> <p>billion (1) 51:1</p> <p>biological (1) 16:16</p> <p>bit (5) 8:5;12:22;22:22; 62:11;63:4</p> <p>blue (1) 16:13</p> <p>Board (48) 3:5;6:21;7:9;</p>
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