

1 BEFORE THE STATE OF INDIANA
2 FINANCIAL ASSURANCE BOARD

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4
5 PUBLIC MEETING OF AUGUST 10, 2017

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9 PROCEEDINGS

10 before the Indiana Financial Assurance Board,
11 Mark Ehrman, Chairman, taken before me, Lindy L.
12 Meyer, Jr., a Notary Public in and for the State
13 of Indiana, County of Shelby, at the Indiana
14 Government Center South, Conference Center,
15 Room A, 402 West Washington Street, Indianapolis,
16 Indiana, on Thursday, August 10, 2017 at 1:34
17 o'clock p.m.

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20
21 William F. Daniels, RPR/CP CM d/b/a
22 ACCURATE REPORTING OF INDIANA
23 12922 Brighton Avenue
 Carmel, Indiana 46032
 (317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

Mark Ehrman, Chairman

3 Kim Forster

Greg Cobb

4 Tom Navarre

Sanka Prasad

5 Amy E. Smith, proxy, IDEM Commissioner

Kim Logan, proxy, State Treasurer

6

Nancy King, Legal Counsel

7

IDEM STAFF MEMBERS:

8 Bobbi Steiff

Katie Blackburn

9 Colleen Rennaker

Tom Newcomb

10 Tim Veatch

Brian Pace

11 Jason "Jay" Goulet

Doug Louks

12 Dan Watts

Janet Pittman

13 Nancy Farrand

14 PUBLIC SPEAKERS:

Christopher Braun

15 Karla McDonald

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1 1:34 o'clock p.m.
August 10, 2017

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3 CHAIRMAN EHRMAN: Okay. Call to
4 order. Call to order. Welcome, everyone, to the
5 Financial Assurance Board meeting of August
6 the 10th of 2017. This is our second meeting.
7 The first meeting with was in April, on the 13th.
8 A quorum is present. We have a new Board member,
9 and he will be here, maybe, just a little bit
10 later.

11 (Mr. Prasad arrived.)

12 CHAIRMAN EHRMAN: As a matter of
13 fact, the new Board member has just arrived.
14 Thanks for coming. Welcome. Have a seat,
15 please. Thanks for coming. You just got here in
16 time for introductions, so please introduce
17 yourself by name and who you represent, please.

18 MR. PRASAD: My name is Sanka Prasad,
19 and I represent Golars Environmental.

20 MR. NAVARRE: My name is Tom Navarre,
21 and I'm with Family Express, here representing
22 convenience stores.

23 MS. LOGAN: Kim Logan, Indiana State

1 Treasurer's Office.

2 MS. SMITH: Amy Smith. I'm the proxy
3 for Comm. Pigott at IDEM.

4 CHAIRMAN EHRMAN: My name's Mark
5 Ehrman, and I represent the petroleum supply
6 industry.

7 MS. KING: I'm Nancy King, the Board
8 counsel.

9 MR. FORSTER: Kim Forster. I
10 represent the public.

11 MR. COBB: Greg Cobb, Freedom Oil,
12 representing independent petroleum wholesale
13 marketing.

14 CHAIRMAN EHRMAN: Okay. Thank you,
15 everybody. Thanks to the Board for being here.
16 Thanks for you; this is your very first time, and
17 there's nothing you need to do today, so
18 everything should be good.

19 I thank everyone in the audience, too.

20 Did everyone have time to take a look at
21 the April 13th meeting? And could we have a
22 motion to adopt?

23 MR. FORSTER: So moved.

1 MR. COBB: Second.

2 CHAIRMAN EHRMAN: Second? Okay. The
3 minutes appear approved.

4 MS. KING: You need a voice vote.

5 CHAIRMAN EHRMAN: Oh, all in favor?

6 MS. SMITH: Aye.

7 MR. COBB: Aye.

8 MR. FORSTER: Aye.

9 MR. NAVARRE: Aye.

10 MR. PRASAD: Aye.

11 MS. LOGAN: Aye.

12 CHAIRMAN EHRMAN: Aye.

13 Okay. Minutes have been approved.

14 Amy, are you ready?

15 MS. SMITH: I am.

16 I will be doing the Financial Report.

17 We're going to go ahead and start with what
18 should be in the Board packet, the Excess
19 Liability Trust Fund. The last time we met, in
20 April, I kind of gave a brief summary of where
21 things were, so this meeting falls timely,
22 wrapping up the end of the fiscal year in 2017.
23 The Beginning Balance of the Excess

1 Liability Trust Fund for the fiscal year was
2 \$104,266,821. You have the summary of Revenue
3 and Expenses. Our Total Revenue was \$53,372,716.
4 Our Expenses, we were below our 11 percent
5 limitation, which was 5,685,548, and we had
6 Operating Expenses of 3,020,218, and we had
7 Claims Paid in 2017 of \$51,249,813.

8 Moving on to the Petroleum Storage Tank
9 Trust Fund, which is --

10 MS. KING: You might want to use the
11 microphone.

12 MS. SMITH: Oh, okay. I usually
13 yell, so -- Petroleum Storage Tank Trust Fund,
14 our Beginning Legal Fund Balance was 2, 104,598.
15 Total Revenue for the year, 1,016,211, Total
16 Expenses, 877,912.

17 Moving on to the Schedules. You'll
18 remember last time, in April, we redid these
19 Schedules, tried to make them a little bit more
20 self-explanatory with titles, clarification on
21 what each column was. I don't think we had too
22 many comments on those. I'm just going to hit a
23 few highlights.

1 Schedule A, this is the Status of Claims
2 Received. This was what came in the door. This
3 was prior to IDEM review of those claims, so this
4 is a very rough view of what came in. Of note,
5 we've really been successful cutting down on
6 resubmissions or the resub claims. We had a high
7 in -- let's see, is it March? A total of seven
8 million -- well, seven and a half million dollars
9 submitted, to a low the following month of 2.9.

10 Moving on to Schedule B, Schedule B is the
11 Status of our Claims Received and Reviewed. We
12 had in June 4.1 million total reimbursement. We
13 had -- April and May were a little low. Some of
14 that had to do with workload for the high numbers
15 that we saw come in earlier, in March.

16 And then Schedule C, this is a 10-year
17 look at claims submitted made to IDEM, again,
18 following a -- following the layout of Schedules
19 A and B. Eligibilities, we had 99 eligibilities
20 come in in 2017. We had an Annual Total of
21 \$60,788,654 of total claims received in 2017.
22 You'll see that is the second-highest number.
23 The last time -- well, third highest -- total

1 amount of claims received at this agency.

2 Schedule D, again, a breakdown of

3 Schedule C once IDEM's review has been completed,

4 and in 2017, our total reimbursement was

5 \$41,738,112.

6 Does anyone have any questions?

7 CHAIRMAN EHRMAN: I do, Amy.

8 MS. SMITH: All right.

9 CHAIRMAN EHRMAN: On the

10 reimbursement percentage, no. 4 here --

11 MS. SMITH: Uh-huh.

12 CHAIRMAN EHRMAN: -- it says,

13 "Percentage of...reimbursable costs divided by

14 the gross amount requested." What's the gross

15 amount again?

16 MS. SMITH: The gross amount

17 requested --

18 CHAIRMAN EHRMAN: Is that the claim

19 amount right there, gross amount?

20 MS. SMITH: Right, that would be the

21 total claim amount that came in.

22 CHAIRMAN EHRMAN: Okay.

23 MS. SMITH: So, prior to our review.

1 CHAIRMAN EHRMAN: Okay. All right.

2 Thank you, Amy.

3 Next is the rules.

4 MS. KING: Oh, she's not --

5 CHAIRMAN EHRMAN: I'm sorry.

6 MS. SMITH: I'm going --

7 CHAIRMAN EHRMAN: I'm sorry.

8 MS. SMITH: All right. So, I keep

9 going here.

10 CHAIRMAN EHRMAN: Yes.

11 MS. SMITH: So, we're going to do a

12 UST Branch Update like I did in April. I think

13 it's really beneficial for the Board to

14 understand just what is really going on at IDEM

15 in all of sections of the UST Branch and how

16 we're operating and what impact that does have on

17 the fund. So, I am going to introduce Doug

18 Louks. He is our Branch Chief of the Underground

19 Storage Tank Branch, and he will take it away

20 from here.

21 MR. LOUKS: Hi. I'm Doug Louks. I'm

22 the UST Branch Chief. You might recall I was

23 introduced I think at the last FAB meeting as the

1 new UST Branch Chief in April. I didn't present
2 anything, as Amy saved me from that, as it was, I
3 believe, my fourth day on the job, so I
4 appreciated that.

5 I thought I'd provide a little bit of my
6 background to let you know how I got here. I
7 graduated from Purdue University. I then went on
8 to earn an M.B.A. from the University of
9 Wisconsin prior to going back to law school.
10 Started with a small firm in town, and then I had
11 interned at IDEM in law school. That's where I
12 met both Nancy and Amy, and a position opened up,
13 and I haven't looked back since.

14 From the last FAB meeting to today, what
15 have we been doing? I've been overseeing and
16 facilitating implementation of some pretty major
17 changes to the Branch as a whole. We began a
18 wholesale review of all processes and procedures
19 internally, just how we function, how we do
20 things, taking a really good view and a hard view
21 at how we've been doing these for years, is there
22 anything we can update, how can we make this
23 better, faster.

1 While we're doing that, the three main
2 goals I try to keep when we're reviewing all of
3 these is we want to be providing a solid and
4 consistent product, everything should be coming
5 out the same, we should be consistent with
6 everything we do. You shouldn't expect something
7 different depending on what day it is and when
8 you submit it. It should all come out the same.

9 We want to be as efficient as we possibly
10 can. We want to get our product out as fast as
11 we possibly can. We don't want you waiting
12 around on us, and all of that comes back around
13 to providing effective management of the fund.

14 What we began to realize -- well, it's
15 pretty obvious -- that there's a really strong
16 interdependence of all of these sections, and
17 they all work together. What the UST Section
18 does inevitably affects the LUST Section, what
19 the LUST Section does affects the ELTF Claims
20 Section, and ultimately that bears an effect on
21 the fund. So, we are really trying to break down
22 a lot of these barriers, collaborate, cooperate
23 with each other, to try to get things -- to try

1 to make these things work as smoothly as we
2 possibly can.

3 In light of all of that, we decided to
4 continue these Branch Updates, because what each
5 of these sections is -- or what each of these
6 sections is doing is important for the fund and
7 how that operates, and I think it's important for
8 all of you to see.

9 So, without further ado, I'll introduce my
10 Section Chiefs behind me. The UST Section Chief
11 is Tom Newcomb. He's going to discuss some
12 changes in the UST Section's inspection process,
13 how we have a new UST rule coming forward that
14 was brought on by some federal changes to
15 40 CFR 280.

16 After that, Tim Veatch, the LUST Section
17 Chief, will give an Update of his section, and
18 finally, we'll end up with Brian, who's the ELTF
19 Claims Section Chief, and then I'll kind of sum
20 it all up for you again.

21 So, Tom?

22 MR. NEWCOMB: Good afternoon,
23 President Ehrman, Board members. I am Tom

1 Newcomb. Last time I was here, I was only on the
2 job for a few months at that point, and we had
3 just started formulating the plan to kind of
4 reorganize the UST Section and how we're handling
5 things. And I've got, you know, a couple of
6 numbers for you, then I'll give you the overall
7 basic approach that we've taken and how things
8 are going.

9 And just, you know, for the new Board
10 member, just so you know, I've been in the UST
11 program since I was a college intern in 1995, so
12 most of the time in -- well, about half of the
13 time in the UST program, the other half actually
14 in enforcement for UST's, and I guess a couple of
15 years here and there for deployments overseas.
16 So, I've been in the UST program for a long time.

17 So, what we've been doing, since basically
18 April the 1st, we've instituted a new inspection
19 process, where before, our inspectors were just
20 kind of given a list of sites to go visit, we're
21 doing a couple of different reviews before they
22 even get to the site.

23 So, we initiate it with this notice of

1 inspections, where we send a letter out to the
2 owners of various individual sites and inform
3 them that we are coming to do an inspection and
4 that they need to submit all of their compliance
5 paperwork that gets reviewed by a compliance
6 manager and the inspector before the inspector
7 even gets to the site. So, hopefully one of the
8 things that's going to do is keep our inspectors
9 on-site for a shorter period of time.

10 And we're also going to be tracking those
11 inspections from start to finish, where that
12 hadn't really been done before in the past.
13 Sometimes violation letters were sent out, and
14 there was no follow-up or completion to that
15 violation letter, whereas now there will be some
16 final action.

17 So, if a site -- most sites hopefully will
18 just get a nice little letter that says, you
19 know, "We found the violations. Thank you very
20 much," or if there is a violation, that they, you
21 know, return to compliance by submitting whatever
22 they need to.

23 And hopefully, in rare cases, within a

1 245-day window, if they just won't come back into
2 compliance, then there's that possibility it'll
3 go to enforcement. We still have some things to
4 work our as far as procedures on a second
5 violation letter instead of going straight to
6 enforcement.

7 So, we'll -- you know, the process is
8 working. There's still some things we need to
9 work out, you know, apply some common sense, some
10 checks on things, make sure we're not just going
11 wild on running around the state. You know, the
12 main goal here is to do things in a smart manner
13 that uses the taxpayers' dollars to the best of
14 our ability and we're not wasting time, we're not
15 wasting money.

16 So -- and overall, one of the things that
17 we have noticed within -- well, since I took over
18 in October, we started out with 4,250 active
19 sites on our database, and we've reduced that to
20 4,167 so far. That's actually a reduction of 106
21 sites. Those aren't all, you know, just
22 closures. We have a number of sites -- I think I
23 mentioned the last time -- that are on our

1 database where the tanks were listed as under
2 investigation, because quite literally we lost
3 track of some places, and the tanks disappeared
4 over the years or they were just paved over. And
5 with the new staff and positions that we've
6 created, they've been able to do research a lot
7 deeper into our records than, you know, the
8 inspectors could. So, in a lot of-- in some
9 cases, at least, they've found, "Well, these
10 sites were taken out, the tanks were removed and
11 everything cleared up 15 years ago by our
12 Brownfields program."
13 And because of, you know, poorer
14 technology back then, the communication wasn't
15 there, but now we can reach into the virtual file
16 cabinet and our UST database and find
17 cross-references that we weren't able to find
18 before.
19 So, the end result is we're having an
20 overall decline in the number of sites. We still
21 have several -- we still have plenty more to go,
22 so by the time we're done cleaning things up, we
23 should have a more manageable number, and have a

1 better idea of just the active sites that we're
2 dealing with and hopefully just the ones that are
3 actually, you know, pumping gas and making money
4 from day to day.

5 Next slide.

6 So, as we mentioned earlier, the UST rule
7 is open right now. Tomorrow actually marks the
8 closing of the second notice period for comment,
9 so then we'll be back around, you know,
10 hopefully, and I'm not sure what the timetable is
11 for the next steps, but what we're basically
12 doing is incorporating the new federal rule that
13 was effective in 2015. It will be incorporated
14 by reference, as the phrase goes.

15 There will be certain parts of the Indiana
16 UST rule that will remain intact. That is
17 primarily the LUST reporting and characterization
18 rule, the UST closure rule. There might be some
19 minor tweaks here and there in certain parts of
20 the remaining portions of the rule, just to fix
21 errors, basically. There are a couple of typos
22 that were still left over from years ago. So,
23 that's pretty much it.

1 And as far as what the new rule, and
2 therefore, the new federal rule, actually does,
3 we -- you know, a lot of people don't know that,
4 but UST's that are there for -- solely for the
5 generation -- or for power -- emergency power
6 generators, so sorry about that, they're not --
7 they don't have to have release detection. Some
8 of my internal people didn't really realize that,
9 but with the new federal rule, all emergency
10 power generator tanks are going to have to have
11 release detection.

12 Field constructed tanks and airport
13 hydrant systems will no longer be exempt, so
14 we'll have to probably build special paperwork
15 just to take care of the Indianapolis Airport.
16 There are certain aspects of that that are going
17 to fall under the rule that haven't in the past,
18 so we'll actually have to manage that and track
19 their compliance with the new rules.

20 Next slide, please.

21 And, of course, walk-through inspections,
22 that is given a lot of talk throughout the
23 industry. It's going to require the owners to do

1 weekly, monthly and annual walk-through
2 inspections that are documented, and there's
3 various testing that goes with that.

4 There's still a lot of talk to be done as
5 far as some testing is concerned. We're being
6 contacted on a regular basis about how -- or what
7 the rule actually says in that regard, and I, of
8 course, can't give you an interpretation of that
9 part of the rule, as I'm also still busy with
10 day-to-day operations. I haven't sat down and
11 memorized everything yet.

12 But there are certain other interesting
13 aspects like ball float vent valves, they'll be
14 banned from any new installation. If they go
15 bad, you can't replace them, they have to go
16 away. And that basically means not just pulling
17 the ball out of the cage, but getting rid of the
18 entire pipe that's sticking down in the tank,
19 because under certain circumstances that could
20 cause a release through a vent pipe, because
21 that's set at -- generally those are set at 90
22 percent full -- fill mark, where the flapper
23 valve on a fill pipe is set at 95 percent.

1 So, if you have fuel going up the vent
2 pipe, when it hits 90 and the ball -- the flapper
3 valve hasn't activated yet, there have been
4 instances, in other states at least, where
5 they've had fuel shoot out the vent pipes.

6 So, besides that, you know, there's going
7 to be actual physical testing of the
8 spill/overflow equipment, which is to include
9 catch basins, which will be probably a large
10 repair bill for a lot of sites. Most of the
11 states that have instituted that rule have seen a
12 60 percent failure rate, and that's with spill
13 buckets on their tanks.

14 And the actual release detection equipment
15 itself is going to have to get tested, and I
16 believe that's an annual requirement, so we're
17 going to have to have ATG's -- automatic tank
18 gauges, I'm sorry -- checked and certified that
19 they're functioning properly.

20 And next slide, please.

21 So, the overall effect, what we're hoping,
22 and we are fairly certain about this, is that
23 what we're doing in the UST Section is going to

1 help reduce some of the load on the Excess
2 Liability Trust Fund, that with the increased
3 focus, not just through our process, but with the
4 actual tank owners themselves having to inspect
5 their own facilities, that we're going to be able
6 to catch releases much earlier than maybe we have
7 in the past, so that the contamination won't get
8 as far and cleanup won't be as costly. And with
9 the increased emphasis on compliance and
10 maintenance of their systems, that they'll just
11 have fewer releases.

12 And we're working on getting a better
13 documentation of everything at these sites, so,
14 you know, basically the owner will know that IDEM
15 has all of our records, and they're there for
16 whoever needs to see it. And I guess I already
17 covered that last bullet point.

18 So, there you go. So, if you have any --
19 don't have any questions, I'll hand it over to
20 the next peer here, to Mr. Tim Veatch of the LUST
21 Section.

22 MR. VEATCH: Good afternoon, Board.
23 Thank you for having me. Again, my name is Tim

1 Veatch. I've been the Section Chief in the
2 Leaking UST Section for about five years, and at
3 IDEM going on my 20th year. So, I just wanted to
4 talk real quickly --

5 Jay, if you'd go to the next slide.

6 -- about some changes regarding the
7 additional amount effective July 1st of 2017,
8 change in statute for IC 13-23-9-1.3. Item
9 number one concerning fee payments for releases
10 reported after July 1st of 2016, looking back to
11 the 2014 fee year.

12 We are allowing, based on the new statute
13 changes, owners and operators to pay those fees
14 within 60 days or prior to the ISC submittal. If
15 all past fees are paid, no additional amount will
16 be applied to the overall reduction in the amount
17 available from the fund.

18 IDEM will waive the requirement for
19 past-due fees paid before ISC submittal for
20 releases discovered between July 1st, 2016 but
21 prior to July 1st, 2017, so those that were in
22 that in-between stage, we're allowing them to go
23 back and pay. We're noticing them upon their

1 eligibility submittals and we're giving them that
2 additional 60 days to pay those back tank fees.

3 We're making some changes in our ISC
4 request letters to address this. When a release
5 is reported, we are sending out an initial
6 correspondence, and if you look at the box below,
7 we're kind of delineating what that deductible of
8 the fees that are past due or owed is and
9 calculating that additional amount.

10 And that's to let those owners know up
11 front what our records currently show and giving
12 them that kind of a head start to knowing that
13 they need to get, in this case, the \$270 in
14 past-due fees paid by that deadline of 60 days or
15 prior to the ISC submittal. So, those ISC
16 request letters will also include an invoice, and
17 we started that process again effective for any
18 release reported after January 1st of 2017.

19 Just a brief eligibility application
20 update. We are making -- well, we're not making
21 changes, we are actually creating some
22 instructions for the eligibility application.

23 When the eligibility application and the

1 claims application were divorced from each other
2 and separated, we lost kind of that connection to
3 those instructions, and we've gotten a lot of
4 questions coming from consultants about how to
5 fill those out. So, we're working on some new
6 instructions, and those should be out before the
7 end of the year.

8 I want to remind everybody that
9 eligibility submittals are now able to be
10 submitted to an IDEM e-mail address. We got a
11 lot of feedback from consultants and owners that
12 that makes the process a lot easier, so we're
13 excited about that.

14 We're continuing to separate the
15 eligibility -- the eligibility termination from
16 the claims process, so owners and operators will
17 see a different look mainly in our letters. They
18 don't look like a claim letter. They'll be
19 easily distinguished from that. We are no longer
20 calling them Claim 1 in our correspondence to
21 owners and operators, and that's just to kind of
22 separate that out for you all to understand that
23 those functions are controlled in two different

1 sections.

2 Increase in eligibility application
3 submittals. If you'll look at your schedule,
4 you'll see that -- I think we received an
5 additional 30 eligibility applications over the
6 last year. A lot of those came in the month of
7 June, I think, after the passage of that new
8 statute, so I think some are holding out in hopes
9 that that would pass, but we do anticipate that
10 those eligibility submittals will continue to
11 increase based on the changes to the statute, so
12 we're excited about that.

13 So, just real brief, LUST process updates.
14 Release reporting, we're trying to increase our
15 coordination with the UST Section. When our
16 initial incident reports come in, we have a
17 delineation of the owner and operator and
18 property owner.

19 Many times those don't match what our file
20 or our database is telling us, so we don't have a
21 current notification form. So, that kind of
22 makes -- starts out the problem for us. Our
23 records don't match. Maybe a property transfer

1 happened, maybe somebody else is leasing the
2 property, but when those don't match, that
3 creates a domino effect to the rest of the
4 program.

5 So, we're trying to, up front, communicate
6 those issues to the UST Section and owners and
7 operators and consultants to try to get those
8 updated notification forms in so that we can get
9 our demand letters and our correspondence going
10 out to the appropriate parties from the get-go.

11 We're also updating our forms for historic
12 release reporting, specifically regarding
13 suspected releases, and we were currently asking
14 consultants to kind of delineate in their
15 comments -- consultants and owners -- to
16 delineate in their comments if there's been a
17 historical release on the site and maybe they
18 closed it with contamination in place.

19 We know that, so the contamination you may
20 be finding is old contamination. So, we're
21 looking at ways to kind of include that
22 information in our forms more directly as opposed
23 to just in that comments section.

1 The same thing with confirmed releases.
2 When we've got active investigations going on of
3 properties or an active release, delineating when
4 a new release comes in, but we have already have
5 a monitoring well in place at that site, and just
6 kind of delineate that on that by IR so that we
7 can get the right correspondence going out for
8 our needs at that time.

9 Site characterization process -- sorry.
10 We're going to take an increased emphasis on
11 developing a strong conceptual site model, and
12 that may include some post site characterization
13 monitoring. We want to get a good idea of what
14 that plume is doing before we step into the
15 corrective action process.

16 Regarding corrective action, like I said,
17 we're going to be divorcing -- owners and
18 operators and consultants will notice in our
19 letters that will be coming out in the coming
20 months that we will no longer be including a
21 corrective action plan request along with our
22 site characterization approval.

23 That was something that was done through

1 the years, I think, more out of convenience, and
2 it's kind of spurred some additional issues that
3 we didn't really anticipate, rather than sending
4 out two letters, when we thought at the time
5 maybe it was better to send one.

6 Well, what we got are sites that may be
7 submitting CAP's or detailed corrective actions,
8 including systems where we don't think that's
9 really necessary. We don't think that's an
10 appropriate remedy. We may not need a corrective
11 action plan submitted at all, just some
12 additional monitoring. So, we're looking at ways
13 to kind of separate that out a little bit moving
14 forward.

15 So, we're also taking a hard look at
16 reasonableness and necessary along the same
17 lines: Is it -- is what is being proposed to
18 IDEM necessary at all, or is it reasonable? Is
19 it cost effective? So, we're taking a hard look
20 at those things, and we'll be communicating with
21 the consulting community and owners as we make
22 those changes moving forward.

23 So, we are in the process of finalizing a

1 new form and format for the corrective action
2 plan. Our goal is to get that out by the end
3 of 2017. I think that's basically our final
4 report form and format that we've not yet
5 completed.

6 So, communication. We're working hard, as
7 I said earlier, to increase our internal
8 communication, not only with the UST Section, but
9 also with the ELTF Claims Section. We've gotten
10 internal work groups going. We're trying to work
11 through processes so that we can better notice
12 our claims staff when something gets approved or
13 what our thoughts are on a particular
14 investigation or corrective action, so that we
15 can make sure that those claims get paid
16 appropriately.

17 We're also looking -- working on our
18 external communication, our letters to owners and
19 operators, being more direct in our
20 correspondence, speaking directly to owners and
21 operators and not specifically to consultants,
22 letting those owners and operators more clearly
23 know what our expectation is moving forward. So,

1 you'll see some changes in the way we write our
2 letters, probably, move forward in the coming
3 months.

4 Next slide.

5 Just real quick, I'd like to give the LUST
6 programs stats. New releases reported for 2017,
7 we're currently at 92. Total active releases --
8 well, back up there. New releases reported
9 for 2017, we're at 92. Our average for the last
10 five years or so has been between 150 to 160
11 sites, so we're kind of right on track there.

12 Total active releases, we're at
13 approximately 1450 right now. We're continuing
14 to work on our discontinued backlog, so these,
15 again, I think I explained at the last meeting,
16 are those sites that are in an in-between part of
17 the process. They're not quite to closure, but
18 based on decisions that were made by IDEM at the
19 time, we didn't feel like there was a real need
20 for additional work on those properties.

21 So, we're going back and looking at those
22 on a risk-based approach and making closure
23 decisions on those. We started three years ago

1 with over 1100, and we're down to about 400, so
2 we've been making good progress there.

3 Site characterization approvals, we're
4 at 93. When I talk about these numbers, these
5 are based on federal fiscal year, so that would
6 be beginning October 1st until now. We have EPA
7 goals that were set at 75 for our site
8 characterization approvals, and you can see that
9 those are already at 93.

10 CAP and CAP Addendum approvals, our goal
11 there with EPA is 75. We're currently at 83
12 approvals.

13 And our NFA goal of 275, we're at 159, so
14 we're a little behind the game on our NFA's. I
15 think I told you all of that last time. We kind
16 of expected that for a couple of different
17 reasons regarding our internal processes and
18 reviews and the way that we're looking at things.
19 So, I expect those numbers will pick up moving
20 forward in the next year.

21 So, that's all I have.

22 Brian?

23 MR. PACE: Thank you, Tim.

1 I set my presentation up a little bit
2 different than everybody else's. It's a little
3 fancier, to just kind of accent the great things
4 the ELTF program is doing. Unfortunately, that
5 requires technology to work and it's not working,
6 so I'm actually going to have to leave the
7 microphone and be unamplified at the computer to
8 give my presentation.

9 MS. KING: Shout real loud, Brian.

10 MR. PACE: I will do what I can.

11 This just accents the problems with this room
12 with the way it's set up.

13 All right. ELTF Section Update. The new
14 phase application that we are -- we release a
15 draft application. It's to help IDEM track and
16 monitor costs by the phase of the project. The
17 phases include immediate response, site
18 characterization and corrective action plan
19 development, CAP implementation, groundwater
20 monitoring and remediation system O&M, and
21 closure.

22 A draft version of the application was
23 released on May 8th for public comments. We got

1 several comments saying, "We need more time."
2 The original one ended on June 2nd. Due to the
3 requests, we extended it to July 7th. We
4 received a total of 13 pages of comments and
5 questions regarding the application. A revised
6 draft phase application has been posted on the
7 announcements page and is now available for
8 everyone to see, based on all of the comments and
9 questions we received.

10 We have set up training sessions for the
11 new phase application. The dates are
12 August 16th, August 30th, September 13th,
13 October 11th, November 8th, and December 6th.

14 Consultants are strongly encouraged to
15 RSVP and attend these events. Some of the
16 largest users of the ELTF have not yet RSVP'd,
17 and it starts next week. Owners and operators
18 are also welcome to attend to learn more about
19 the program. If you're interested in attending,
20 RSVP.

21 (Laughter.)

22 AUDIENCE MEMBER: This is really high
23 tech.

1 MR. PACE: Let Bobbi Steiff know at
2 rsteiff@idem.in.gov. It is important that people
3 RSVP so we have adequate staff there to do the
4 training.

5 We also made an ERC announcement. The
6 ELTF no longer requires no further action status
7 before evaluating ERC's for reimbursement. They
8 may be submitted for reimbursement after site
9 characterization has been achieved, and the LUST
10 PM must approve the use of the ERC on the
11 property. An ERC can be recorded at any time,
12 but unless these two items have been met, they're
13 not going to be eligible for ELTF consideration.

14 Receipts and invoices from the Office of
15 the Recorder of the county are still required as
16 backup.

17 And what everyone's wanted to see is the
18 numbers, how long it's taking us to review
19 claims. We've slightly modified this since last
20 time, and we're no longer doing -- I'm no longer
21 including our initial review time up there.
22 We've just got the time it takes for it to get
23 out of our hands.

1 And you will see we still have asterisks
2 for March, April and May, even though we are
3 looking at about a 60-day turnaround time. That
4 is because we have one site that's out of the
5 ordinary that OLC's involved with, so it's kind
6 of its own beast on its side and not the average
7 typical site.

8 When I pulled these numbers, there were
9 only two claims left in May that had not been
10 finalized. As you see, in April we jumped to 71
11 days, and that was directly related to the 7.6
12 million dollars of claims we received back in
13 March.

14 Graphical representation, this starts back
15 in September 2015 and goes to current data [sic].
16 Again, May and June, May is really close to being
17 accurate. June is not quite accurate yet. It's
18 running right about 60 days for us to get our
19 claims reviewed, out the door to accounting. And
20 this is with the amount received superimposed on
21 top of it, and you can see there is a delayed
22 correlation to the amount we received and the
23 time it takes to get claims out the door.

1 Are there any questions?

2 (No response.)

3 MR. PACE: All right. I will turn it
4 back to Doug.

5 MR. LOUKS: All right. Thanks, Tom,
6 Tim and Brian for their updates.

7 So, where are we going and how do we get
8 there?

9 You can go to the next slide, Jay.

10 Where we're headed is, it's imperative --
11 it's actually -- you know, we're duty bound to
12 manage the ELTF in the interest of the owners and
13 the operators. It requires us to be good
14 stewards of the fund, and we need to pay things
15 that are -- should be paid, and we need to pay
16 them as quickly as possible.

17 We also need to reduce those costs as much
18 as we can, and it's impossible for this to be
19 done outside the context of prevention and also
20 our project management remediation.

21 Previously, as I mentioned, there tends to
22 be a little bit of a siloing effect, where the
23 sections talk to each other, but maybe not as

1 well as they could have, and there wasn't very
2 effective goal sharing.

3 You can go to the next slide, please, Jay.

4 So, what are our shared goals? Fewer
5 releases and proactive project management, plus
6 faster closures, we want to get those in a phase
7 out as quickly as we possibly can. It's going to
8 lead to less burden on the fund in the long run.
9 Ideally, as unachievable as this might actually
10 be, Bruno would call this a stretch goal, one
11 that you kind of hang out there that drives you
12 forward that you may not ever achieve.

13 My stretch goal is that we never deny a
14 claim on the fund, that we've done such a good
15 job everywhere else that it comes in and it gets
16 out the door and it's paid. We've made it clear:
17 Go out, do this work. The consultants have gone
18 out, they've done it, they've done a great job,
19 we've done a good job, it all goes out, and we're
20 done. We get these things taken care of as
21 quickly as we can with nobody spinning their
22 wheels.

23 Now you can go to the next slide, please.

1 How do we get there? Well, what we've
2 been doing and what Amy suggested the last time,
3 we're following what the audit suggested that we
4 do. We are focusing on prevention, Tom's group.
5 We want fewer releases. That comes along with
6 the new UST rule.

7 Along with that, both EPA and many other
8 states have come out and stated that effective
9 use of red tag and how that works in our
10 processes can lead to better compliance and
11 reduce the amount of releases, if you have
12 potential ongoing releases at sites. We can also
13 prevent those from getting any worse.

14 The new inspection process, it's getting
15 us out there. We're updating our notification
16 forms, knowing our universe, bringing in these
17 owners and operators as they come along, making
18 sure that we have our table set the way that it
19 should be.

20 And all of this can help LUST in the long
21 run as well. If we can do a good job on that
22 front end, it help -- makes their job easier,
23 allows them to remediate sites better, and,

1 again, lowers the cost in the long run for

2 everybody.

3 Next slide, please.

4 Remediation, taking a more proactive

5 approach and getting those -- getting everyone to

6 NFA again as quickly as we can. That requires us

7 to take a holistic approach to project

8 management, trying to involve the owners a little

9 bit more, owners and operators, making sure that

10 they're informed, that we're getting out there,

11 we're communicating better with them and their

12 consultants as well.

13 That way we're making sure we're all on

14 the same page, eliminating any confusion as much

15 as we possibly can. Given that, you know, we

16 also want input from owners and operators about

17 site management and how we're managing these

18 projects from -- internally as well.

19 NFA, that's our collective goal. We want

20 to issue them, owners and operators want them,

21 and that's what we're trying to get to. We want

22 to do risk-based closures, eliminate that risk of

23 exposure as quickly as we possibly can, pinpoint

1 it, eliminate it, and close it out as much as we
2 can.

3 And what that leads to is what I've called
4 the VAT, and I'm not talking about, you know, the
5 progressive European tax reform. I'm talking
6 about value added tasks. What are we asking to
7 be done? Does that add value to the remediation.
8 And we're really taking a hard look at this, how
9 we're packaging things. Like I said, we want to
10 be lean and mean and efficient.

11 We need to really focus on these things.
12 We shouldn't be asking for things to be done if
13 they're not adding value to us and they're not
14 adding value to the owner and they're not adding
15 value to what the consultant's doing out there.
16 So, these are all of the kinds of things that
17 we're looking at here.

18 And the next slide, please.

19 All of this with the hope of reducing the
20 burden on the fund. We've got the updated ELTF
21 process. We're working on trying to be faster
22 and efficient inside. We're trying to make
23 things a little bit -- notice we're doing a lot

1 of things on paper, so we've taken a really hard
2 look at this and we're trying to create a new
3 procedure internally that will allow us to
4 reviews these claims as quickly as we possibly
5 can.

6 Also allow submittals from owners and
7 operators and consultants in the most effective
8 way possible. We are actively pursuing
9 possibilities for electronic transmission of
10 claims, and like I said, trying to pass these
11 things off with a digital workload as opposed to
12 the kind of hand paper files that we were passing
13 back and forth.

14 ELTF rule revision. Dan's going to come
15 up and talk about that more, so I won't steal his
16 thunder. There was just one aspect of that that
17 kind of fit that I wanted to address. The new
18 rule does remove these technical milestones as
19 they go towards ELTF reimbursement.

20 Holding up site reimbursement for a
21 year -- or claims reimbursement for a year, two
22 years, three years, four years while we're
23 waiting on some technical milestone, it really

1 causes these consultants, working on behalf of
2 the owners and operators, to bear the burden of
3 this cost for extended periods of time.

4 That makes things more expensive. The
5 longer you're carrying a debt, the more expensive
6 that becomes in the long run. By removing those
7 milestones, removing the technical milestones and
8 being able to reimburse these quicker, we're
9 hoping that that will again reduce these costs in
10 the long run.

11 The new ELTF claims application. It's a
12 more phase-based approach. We took a lot of
13 suggestions from the audit, we took some
14 suggestions from the FAB at the last meeting in
15 April. It's going to allow us to, you know,
16 collect and organize this data and analyze these
17 costs.

18 And again, what are we doing? We're
19 trying to provide as much information as we can
20 to this Board to allow you to direct us on how to
21 manage this fund, and that's where the FAB
22 collaboration comes in. We're trying -- like I
23 said, we're trying to do the best we can to

1 provide you with the best information we possibly
2 can so you can direct us in how to manage this
3 fund.

4 You can go to the next slide, please.

5 This is one of the main reasons -- aspects
6 that attracted me to this position. I want to
7 ensure the health and viability of this fund now
8 and in the mid term and in the long term. We
9 need to be able to provide assurance for cleanups
10 to owners and operators for now and in
11 perpetuity.

12 That is my task. That is always the goal
13 that's in the back of my mind. It's something
14 that I think about every day when I'm doing --
15 when I'm working. And, you know, it's -- like I
16 said, it's a vital part of my job and I take it
17 very, very seriously, and I just wanted all of
18 you to know that.

19 You can go to the next slide.

20 It's a completely utterly shameless plug
21 for my staff. We've created -- we've done a lot
22 of changes in the last several months, and not
23 only have they kind of come along for the ride,

1 they've actually been integral in a lot of these
2 processes.

3 You know Jay. Jay's been here doing this
4 for quite a while. Some of the others you may
5 not know, Colleen Rennaker and Katie Blackburn
6 behind me are ELTF claims reviewers, and they,
7 along with their comrades, I guess, they
8 helped -- they really helped us in devising this
9 new interim process.

10 We all sat down together and we talked
11 about, "How can we make this better? I want to
12 hear from you, and tell me how you think we can
13 make this as efficient as we can, to do the
14 best -- basically, how can we make this work for
15 you?" And they've been really great. They've
16 provided a lot of input.

17 Like I said, they've -- we haven't had to
18 drag them along kicking and screaming by any
19 means. They've really -- I think they've taken
20 ownership of where this is going, and I think
21 that it's really helped us, again, move this
22 whole program forward in a positive manner.

23 And with that, I'll give it back to Amy.

1 MS. SMITH: Well, thanks so much,
2 Doug. And again, I -- it's not a shameless plug.
3 It's -- honestly, the staff of the UST Branch has
4 worked and is working extraordinarily hard. I
5 hope the results are being seen on our customer
6 service and in just your general interactions
7 with the agency. I can't say enough about all of
8 our Section Chiefs and all of our staff.

9 That being said, we've had some discussion
10 about the new ELTF claim application, which, as
11 we mentioned, is more of a phased approach. We
12 are continuing to work to refine that. We're
13 going to have some of these training sessions.

14 But as we're taking a look at what the
15 demand is on the fund and where these costs are
16 falling in, in preparation for this next
17 rulemaking, we know we need to be able to take to
18 the FAB a presentation of what we're actually
19 seeing on a day-to-day basis with these numbers.
20 How are these costs coming in? Where is this
21 money being spent?

22 So, the claims application as it's revised
23 is going to take us a long way, because we'll be

1 able to take that data, manipulate it, and do
2 this presentation to you in the future.

3 In the meantime, we're going to have
4 Colleen Rennaker come up. Staff have been
5 gathering some data, but primarily this is a
6 presentation on data that the agency's received
7 for claims in the fourth quarter of 2016.

8 And Colleen has got her presentation, so
9 Colleen is with our ELTF Claims Section, and
10 she'll be taking it away from here.

11 MS. RENNAKER: So, we started taking
12 a look at our monitoring costs, and we compared
13 the costs in Indiana to costs in other states.
14 Over the past few months, we have been taking --
15 looking at quarterly monitoring data from actual
16 claims submitted to IDEM.

17 In doing this, we have been taking the
18 claims after the review process and pulling out
19 anything that we perceived to be monitoring
20 costs. We've broken those into categories such
21 as planning, fuel costs, report writing, and the
22 laboratory analytical costs.

23 We do realize that some of our data is

1 incomplete. We know that monitoring is invoiced
2 over several invoices, and therefore submitted to
3 us over several claims, so we made our best
4 effort to omit any incomplete data sets from this
5 comparison.

6 Slide.

7 We then looked at cost guidelines from
8 other states. We were able to find 13 states
9 with similar programs to ours, and we pulled what
10 we understood to be their monitoring rates for
11 their reimbursement process.

12 All right. Slide.

13 We first looked at sampling costs. We
14 decided to look at what the costs would be to
15 sample 12 monitoring wells just for what we call
16 a quarterly monitoring event. For all of the
17 events that we looked at, we calculated a
18 per-well rate. All of these per-well rates
19 included all personnel, equipment, supplies, drum
20 disposal, and travel.

21 As Amy said, our most common event was
22 Fourth Quarter 2016, and our average mileage in
23 our small data set was 182 miles round trip for a

1 quarterly monitoring event. So, any of the other
2 states that did not include this mileage in their
3 per-well rate, we gave them 182 miles at that
4 state's rate during the Fourth Quarter 2016. For
5 the Indiana data, we excluded any events that
6 utilized low-flow sampling or any events that
7 sampled for PAH samples.

8 Slide.

9 So, this is the first graph that we see.
10 You can see in the green here -- the pointer
11 doesn't work very well -- the greens there are
12 the --

13 (Slide projector lost connection.)

14 MS. SMITH: Poor Jay. It's a really
15 nice slide, by the way.

16 (Discussion off the record.)

17 MS. RENNAKER: There we go.

18 The bars in green indicate the maximum
19 sampling allowance for the other states. We have
20 our 13 states down here at the bottom, and then
21 the small blue bar on the right, this is the
22 Indiana average. This is based on the average
23 per-well rate for the sampling costs in our data

1 set extrapolated out to what a 12-well event
2 would cost.

3 This bar on the far right is the Indiana
4 maximum. This was the actual amount submitted
5 for sampling costs from one event when we looked
6 at events that sampled 12 wells or less.

7 We then looked at report writing costs.
8 We analyzed this as the cost of producing one
9 monitoring report. Many of the other states have
10 a maximum rate for monitoring reports regardless
11 of how many wells are sampled. They have one set
12 rate, and that's what they reimburse for.

13 Some of the states had variable rates for
14 reports. We omitted the states with variable
15 rates for reports because we could not determine
16 a maximum based on their rule.

17 For Indiana data, it's reported as an
18 average of all report writing costs, so of all of
19 the events in this set of data, we gave you the
20 average cost for one monitoring report. These
21 numbers all include labor, reproduction, and
22 postage when allowed by the individual state.

23 And again, you can see on the bottom here,

1 we have 11 states with our report writing costs
2 here, and those are -- those state the maximum
3 allowance for a monitoring report. The small
4 blue bar on the right is Indiana's average. This
5 is the average cost submitted for one quarterly
6 monitoring report. And on the far right is
7 Indiana's maximum. This was the highest amount
8 that we had submitted for one event for one
9 monitoring report when we looked at events that
10 had 12 wells or less.

11 Slide.

12 We then took the two and combined them.
13 For other states, this was taking a sum of the
14 projected samplings costs, the projected maximum,
15 and the report writing maximum. Then we looked
16 at Indiana.

17 What I did was did an overall per-well
18 rate, such as the overall costs for sampling and
19 report writing, calculated a per-well rate, and
20 then extrapolated that out to 12 monitoring
21 wells. And for any of these costs, all
22 laboratory analytical costs are not included in
23 any of these numbers.

1 Slide.

2 So, you see in the green here, again, we
3 have the projected maximum for a 12-well event
4 for sampling and report writing for the 11 other
5 states, we have the Indiana average based on our
6 average per-well rate, and then on the far right,
7 again, we have the Indiana maximum.

8 This is an actual event, and the maximum
9 amount that was submitted to us when we looked at
10 12 wells or less, including all report writing,
11 any sampling costs excluding any laboratory
12 costs.

13 Next slide.

14 We then took our comparison one step
15 further, and we compared the costs from 27
16 consultants. Within this data set, these 27
17 consultants are represented in all of these
18 numbers. Right here we have our list of
19 consultants in alphabetical order.

20 Slide.

21 So, we calculated the consultants' average
22 per monitoring well rate, and then we took that
23 per-well rate for all of their events in our

1 sample size and extrapolated out to what a
2 12-monitoring-well event would cost. We then
3 compared it to the numbers that we had from other
4 states on what their maximum is for a
5 12-monitoring-well event.

6 Slide.

7 A little hard to see the colors here, but
8 imagine the other graphs where the green here
9 represents the other states' maximum allowance
10 for sampling events. Again, lab costs are
11 excluded. The blue bars indicate each individual
12 consultant.

13 These consultants are ranged from lowest
14 cost to highest cost, they are not in
15 alphabetical order on this graph. But this is
16 what -- if they were to continue at the same
17 per-well rate, what a 12-monitoring-well event
18 would cost for sampling and report writing.

19 Next slide.

20 So, our conclusions you see from this.
21 Indiana's average event cost was greater than
22 every other state's maximum event cost. In
23 Indiana, without cost control, without seeing

1 these maximum allowances, Indiana monitoring
2 events can cost up to three times greater than
3 the maximum allowance from surrounding states.

4 So, what are our next steps moving forward
5 with this information? As Amy and Doug and Brian
6 have said, we have our Phase Approach
7 Application. We believe this will help us be
8 more efficient and we can more efficiently
9 collect this information.

10 Instead of seeing it, collecting it, and
11 mining it on the back end, we'll be able to see
12 it on the front end, be able to collect that and
13 move forward and see what these phases and the
14 remediation process are actually going to cost.

15 Slide.

16 Questions?

17 (No response.)

18 MS. SMITH: So -- and again, I just
19 want to emphasize, this is our first grab of the
20 data. This is our first grab of the data with
21 imperfect ways to calculate that data. That's
22 why we're moving forward with this application
23 change. So, please, if there are any questions,

1 go ahead and ask. I realize, you know, this is a
2 rough go at it. We're using a very small data
3 set.

4 Again, in the upcoming months, as we take
5 this application live and we're able to take this
6 through various stages of the project, we will
7 have much more representative data. But we did
8 feel that this was a good time to start talking
9 about what we're doing, why we're doing it, and
10 taking a good hard look at the man on the line.

11 So, that is the report from IDEM.

12 CHAIRMAN EHRMAN: Okay. Very good.
13 Thank you. That was some good work, very good.

14 MS. SMITH: Again, thank you, staff,
15 so much. Excellent.

16 CHAIRMAN EHRMAN: Okay. Now is the
17 time for the rules hearing. I've got to read
18 this off before we go into the rulemaking. There
19 will be a hearing prior to consideration of
20 preliminary adoption of ELTF rules at 328 IAC 1.

21 The draft rule is included in the Board
22 packet and is available for public inspection at
23 the Office of Legal Counsel, 13th Floor, Indiana

1 Government Center North, Indianapolis, Monday
2 through Friday between the hours of 8:15 a.m.
3 and 4:45 p.m.

4 Appearance cards are available for those
5 who want to speak on the rule, if they're here
6 today. I think they're on that table over there.
7 If you've not already filled out a card and wish
8 to speak, please do so and hand them up -- hand
9 them to Board counsel.

10 Written statements may also be submitted
11 for the record during the hearing. Please hand
12 any written statements to Board counsel if you
13 wish them to be included in the formal record.

14 A written transcript of the hearing will
15 be made available for inspection at the Office of
16 Legal Counsel.

17 Would the officer -- the official reporter
18 for this cause please stand?

19 (Reporter sworn.)

20 CHAIRMAN EHRMAN: Thank you very
21 much.

22 MS. KING: Go ahead.

23 CHAIRMAN EHRMAN: This is a public

1 hearing before the Underground Storage Tank
2 Financial Assurance Board for the State of
3 Indiana regarding preliminary adoption of
4 amendments to 328 IAC 1, Excess Liability Trust
5 Fund Rules, LSA No. 08-684.

6 MS. KING: No, actually --

7 CHAIRMAN EHRMAN: That's not right?

8 MS. KING: No.

9 CHAIRMAN EHRMAN: Scratch that.

10 MS. KING: It's LSA 15-231.

11 CHAIRMAN EHRMAN: The LSA Number is
12 No. 15-231.

13 (Discussion off the record.)

14 CHAIRMAN EHRMAN: I will now
15 introduce Exhibition A [sic], the draft rule,
16 into the record of the hearing.

17 Dan Watts from IDEM will present the rule.

18 MR. WATTS: Hello. I'm Dan Watts.

19 I'm a rule writer for IDEM, and I don't have a
20 PowerPoint for everyone today. You'll just have
21 to listen to my wonderful voice. And I'm
22 presenting LSA Document No. 15-231 to the Board
23 for preliminary adoption.

1 IDEM is proposing amendments to 328 IAC 1
2 that will align the rule requirements for the
3 Excess Liability Trust Fund with the statutory
4 changes that were enacted by the General Assembly
5 during the 2016 and 2017 legislative sessions.

6 The statutory changes mainly modified ELTF
7 definitions and requirements for eligibility,
8 claims, general eligible costs, payment and
9 deductible limits, and clarified some statutory
10 requirements and ELTF administrative procedures,
11 and they also deleted a heck of a lot of
12 statutory language in there.

13 The statutory changes created some
14 inconsistencies between the ELTF statutory
15 requirements and the ELTF rule requirements and
16 that is the main issue that IDEM is addressing
17 with this rulemaking.

18 The proposed amendments in the rulemaking
19 include extensive deletion, modification, and
20 addition of rule language and requirements, some
21 changes to defined terms and statutory
22 references, and amendments of requirements that
23 are repetitive or conflicting with the ELTF

1 statutory requirements. And I won't go into the
2 more detailed changes, because we could be here
3 until 4:00 if I -- you know, or 5:00 o'clock --
4 if I went into every single one of those.

5 The rulemaking also improves clarity,
6 accuracy and organization of the rules without
7 affecting the intent of the rule language and
8 requirements. We typically make these types of
9 amendments with any open rulemaking, and these
10 types of amendments include corrections to
11 outdated requirements such as references to the
12 Risk Integrated System of Closure, reorganization
13 of requirements to sections that more accurately
14 reflect the intent of the requirement, and
15 improvements to the rule language to comply with
16 our Administrative Rules Drafting Manual.

17 Now, IDEM recognizes that certain
18 provisions of Title 328 could benefit from more
19 extensive revision of what is proposed in this
20 rulemaking, such as the list of specific
21 reimbursable costs in 328 IAC 1-3-5. We received
22 some comments on that. And IDEM plans to address
23 these provisions in a subsequent rulemaking,

1 because, as previously mentioned, the main focus
2 of this rulemaking is to align the rule
3 requirements with the recent ELTF statutory
4 changes.

5 And IDEM prefers to accomplish this goal
6 as soon as possible rather than risk further
7 delay through a more comprehensive rulemaking.
8 And after the completion of this rulemaking, IDEM
9 plans to initiate another rulemaking that will
10 propose additional revisions to Title 328.

11 And we understand that this Board does not
12 adopt rulemakings very often, so myself and other
13 representatives from IDEM are available to answer
14 questions you may have for this rulemaking or the
15 rulemaking process in general. And the
16 Department respectfully requests that you
17 preliminarily adopt this rule as presented.

18 Thank you.

19 CHAIRMAN EHRMAN: Thank you.

20 MR. WATTS: Are there any questions
21 from the Board for me?

22 (No response.)

23 CHAIRMAN EHRMAN: Any questions?

1 (No response.)

2 CHAIRMAN EHRMAN: No? Okay. We've
3 got two appearance cards. The very first one is
4 Chris Braun with the IPCA.

5 MR. BRAUN: Mr. Chairman, members of
6 the Board, Chris Braun on behalf of the IPCA.
7 First of all, I want to thank you all for sharing
8 your time with me today on my birthday, so I've
9 enjoyed the opportunity to have this celebratory
10 meeting, so thank you for that.

11 I want to reserve my comments on the
12 public open forum for the ELTF presentation that
13 was just done, which was excellent, and just
14 underscore the IPCA's appreciation for the work
15 really over the last two years working -- Brad
16 Baughn is here, and then Scott Imeson could not
17 make it today on behalf of the IPCA -- working
18 hand in hand with tank owners in getting a lot of
19 this legislation adopted.

20 And it has certainly made a huge
21 difference, and it's an exciting time to be
22 involved in environmental law and dealing with
23 ELTF and UST because of the progress we've made

1 over the last 24 months.

2 The -- as I mentioned at the last FAB
3 meeting, the draft of the rule was so well done
4 and it adhered so closely to the legislation that
5 was adopted in 2016 and 2017 that we had not a
6 single comment. We did not have a single change
7 to it. It was really well done.

8 And we think that the -- and again, I'll
9 reserve comments on the others later on, but the
10 next rulemaking also, it shows a tremendous
11 commitment to the continuous improvement across
12 the board, which really enures to everyone's
13 benefit.

14 So, on behalf of the IPCA and its UST
15 owners and operators, we fully support the
16 adoption, preliminary adoption, of the rule. So,
17 with that, if you have any questions, I'd be
18 happy to answer them.

19 (No response.)

20 MR. BRAUN: Thank you very much.

21 CHAIRMAN EHRMAN: Thank you.

22 The second card is Karla McDonald, with
23 Golars.

1 MS. MCDONALD: Good afternoon, and
2 thank you for this opportunity. I do have hard
3 copies available for every member of -- obviously
4 that goes into a whole lot more detail than I'm
5 going to go into today. I just have a couple of
6 comments here that we would like to make.

7 One is obviously we do appreciate the
8 efforts of Doug, and especially what Tim has been
9 doing in his group here lately. We have seen
10 some really positive effects from their
11 activities. However, in regards to the rules, we
12 just would like to make a few comments that we
13 have seen here as some implementation activities
14 have gone on in -- with the agency.

15 We do believe that there are some fiscal
16 impacts, kind of hitting the fiscal impacts to
17 owners and operators, and even off-site property
18 owners, in regards to some of the definitions
19 that are provided in the new rule. And with
20 that, that really relates to future property use
21 and financing available to a new property owner
22 or even an existing property owner with that.

23 We do, in general, feel that the

1 cost-effectiveness definition in the rule is
2 somewhat vague, and we would like to point out
3 that in accordance to the Administrative Rules
4 and Procedure Act [sic], that rules should be
5 written for ease of comprehensive, and we don't
6 feel necessarily with that specific definition
7 that that ease of comprehension is there.

8 A little bit more specifically on that
9 is -- the discussion of that definition is that
10 technical reviews will be done on the capability
11 of the corrective action -- corrective action
12 program to achieve remediation in regards to a
13 cost-relative outcome, and that's all well and
14 good and we wholeheartedly agree to that.

15 However, we pose the question of who truly
16 can make that decision? Is it a site's
17 consultant who works with the owner and their
18 idea of what they -- where they want to be with
19 that property next year, three years, five years
20 from now?

21 Or is that IDEM that makes that decision,
22 that this is the most cost-effective approach,
23 with no necessarily thought of a year from now or

1 three years from now what that property use may
2 be, or the ability for the property owner to get
3 financing for that property for any future use?
4 We would request just a bit more clarity in that
5 definition for the rule.

6 A little -- a couple of examples that we
7 have come across that kind of fit within this
8 area is recently we have -- we received a CAP
9 denial from a site, where we had proposed a more
10 active approach in remediation. The site has
11 significant off-site issues. We have off-site
12 owners who sometimes work with us, sometimes
13 don't.

14 And our active approach was denied, and
15 again, kind of the cost-effectiveness and that
16 capability to achieve receive mediation, those
17 statements were included in that denial letter.
18 However, that was it. We don't feel that this
19 approach is capable to achieve remediation or
20 costs relative towards that. That was it.

21 The LUST group did come back and say, "We
22 want you to do Plan B instead," with very little
23 information on what Plan B really was, "and have

1 your response with us in 30 days." We looked at
2 that letter and we didn't know -- "where do we go
3 with this?"

4 You know, for all of the information we
5 had to provide in the CAP and our justification
6 of why we thought the CAP was appropriate, we get
7 a page-and-a-half letter back that says, "No,
8 just do this, and get an ERC, and environmental
9 restrictive covenant, with the off-site owner"
10 that will not happen in this case.

11 Another kind of notation on that is in
12 that letter, we were not -- normally the letters
13 will come back, "If you would like -- if you want
14 to contest this denial or whatever, contact
15 so-and-so," and that language was taken out of
16 the letter. This is your CAP approach.

17 And also, a side note with that is IDEM
18 does have a technical review panel available to
19 take when a consultant and the project manager or
20 technical team don't agree, they come in and sit
21 down with that panel. However, to our knowledge,
22 that tech review panel is not available for LUST
23 sites. So, we're back to sitting down the group

1 that already said, "No, and we want you to do
2 this approach."

3 So, again, it's more along the line of the
4 definition. We just want some further idea of
5 who -- who makes that determination that this is
6 cost effective, that this is going to achieve or
7 not.

8 And you know, we also think that as a
9 consultant, we are somewhat hesitant to go to a
10 client and say, "We're just going to leave this
11 contamination here, because I -- technically, I
12 can get a case together that says it's not going
13 to hurt anybody if we leave it here," on a human
14 health level.

15 However, the owner/operator has a lot more
16 issues than that. Again, I go back to the
17 financial responsibility that they have to this
18 property and future use of that property. If the
19 tools are not there for this property owner to
20 use towards that property, then it could very
21 well be the owner eventually walks away, and then
22 who's left with it?

23 The -- kind of in closing, I'd say much

1 more detail in the letter that I presented, but
2 we just really would like that definition to be
3 looked at and maybe hammered out a little bit,
4 because it could be literally where on the owner
5 and operator's side, that cost and availability
6 to achieve remediation may be one answer and it's
7 in a different thought with the agency.

8 So, thank you.

9 CHAIRMAN EHRMAN: Thank you.

10 Okay. One more appearance card, Om Narla,
11 with Golars also.

12 MR. NARLA: My name is Om Narla. I'm
13 with Golars Environmental. I want to make some
14 comments regarding the monitoring well data that
15 was presented by IDEM.

16 IDEM states that in Indiana they're
17 spending three times the cost for quarterly
18 monitoring. Golars, as a company, we work -- we
19 have started about eight years ago, and we worked
20 in six states, and we have seen some programs in
21 other states, how they operate, how a lot of
22 programs go bankrupt, and they come back.

23 That's very common, it's very inconsistent

1 with programs in several states. Indiana has one
2 of the best programs, and thanks to the Board for
3 doing this, for keeping it straight. I would
4 like to see if you guys have evaluated the
5 remaining 35 states, how Indiana is doing
6 compared to other states, too.

7 And did IDEM evaluate the depth of wells?

8 How deep are the wells? If the well is 30 feet
9 compared to a well that's 15 feet, the time it
10 takes to sample a well changes. So, a 30-foot
11 well [sic], it takes a longer time, you need a
12 longer time to sample, versus a 15-foot well.

13 The type of soils. Indiana is a state
14 where the water is very -- it's very close to the
15 ground. Because of that, when you put a well and
16 when you want to pull out water from the well,
17 every time you sample a well, before you sample,
18 you recharge the well.

19 To recharge the well, you have to take out
20 three core volumes, so basically three volumes of
21 water from the well. In Indiana, it's so much
22 water, you get like 55-gallon drum of water each
23 time you sample, and imagine the time it takes

1 for you to sample all of the wells. You take all
2 of the water, you use a small baler, that's
3 two-inch baler, by three feet. You use the
4 baler, take one baler each time, put all of the
5 water in the drum, move the drum to the corner of
6 the site.

7 And most of the Indiana sites, a lot of
8 them that at least we do, are active stations. I
9 can't send one person there to sample a well. He
10 could get hit. So, we have to have two people
11 for safety reasons. And we have these two people
12 and -- but the thing is the speed of -- the speed
13 of sampling goes up.

14 But the amount of water is so much in
15 Indiana each time you -- especially in Gary area,
16 most of the states have water table at eight or
17 nine feet, so this actually increases the time to
18 do sampling.

19 And most of the locations that IDEM
20 evaluated, the locations are shut-down locations
21 or active locations? If a site is shut down,
22 it's easy to sample, it takes less time to
23 sample, there's no hindrance, there's no parking

1 cars.

2 If it's an active station, there are
3 several cars parking. You can't sample a well.
4 You're ready to sample a well, and all of the
5 sudden there's a car parked. You've got to wait
6 for it. And these sites are very small.

7 And are there ELTF funds available in
8 those 13 states you guys are comparing? If there
9 are no ELTF funds, I don't think they maintain
10 the kind of quality Indiana is maintaining in
11 getting the data.

12 And did IDEM look into the fact that is
13 the data repeatable? Is the data -- if you go
14 for one year and check the data, is the data
15 same? Is it changing? One day the concentration
16 is 700, the next year it's 1,000 our 2,000, that
17 data is not something that you can make cleanup
18 decisions on, the quality of the data.

19 And that's why the fund -- if the states
20 have strong ELTF fund, there is a consistency in
21 sampling, consistency in policies and procedures,
22 and people sample it thoroughly. Are they
23 following IDEM, OSHA rules? It is certain

1 responsibility for employees to -- we have to
2 make sure they are safe. Are we doing that?

3 The water recharge. I talked about the
4 water recharge. It's a huge water recharge. In
5 Illinois, if you go to the state right next to
6 us, in Chicago area, there's no water, there's
7 not much water, 30 feet, 40 feet.

8 And the cost of cleanup will be cheaper, a
9 lot cheaper there. You can close a site with
10 less than a hundred thousand in Chicago, but here
11 it may take -- in Gary, the same site, the same
12 concentration levels, will take you half million
13 or seven hundred thousand, because the water
14 actually takes this -- the contamination all over
15 the place, and the water flow is really fast
16 because of the amount of water present.

17 Are the QM sampling rules specific? Like
18 Indiana has their sampling rules. Are the rules
19 similar in the states you guys -- 13 states you
20 are bringing up? We receive very specific
21 instructions from IDEM on "you have to do this
22 first and you have to do that second." And
23 imagine if we have to do that, it takes time.

1 And IDEM, in several letters we will be
2 happy to provide you, that IDEM gives specific
3 instructions on how do we have to sample. And
4 any time the contamination is really high -- the
5 concentrations are high in Indiana. Because of
6 the water level, the concentrations are higher in
7 several areas.

8 Any -- so, every time you sample a well,
9 when you go to the next level -- next well, you
10 have to take the equipment, you have to clean
11 that equipment. There is a lot -- there is a lot
12 of time difference between contaminated property
13 and noncontaminated property, sampling the wells.

14 And IDEM, for example, there are like --
15 there are states -- in one of your 13 states --
16 there are states that will -- the QM reports are
17 a one-page document or two-pages documents.
18 Here, IDEM wants a copy of the field notes, they
19 want you to write the field notes, they want you
20 to put that in the QM reports, they want you to
21 put that in the claims.

22 If we have to follow so many processes,
23 we -- it takes time. The field people have to go

1 there, they have to put everything, like who came
2 to the site, what's the temperature, what they
3 did. All of that stuff has to go in, and they
4 have to enter all of the data, then they have to
5 send it as part of the QM report. And they --
6 IDEM will deny claims if there's no field notes.

7 And the recharge rate on wells is one big
8 thing that consumes a lot of time, and how much
9 water is being generated? And are you
10 calculating the number of drums it takes to do
11 the quarterly monitoring?

12 And what is the -- and what is the quality
13 of the data? Is the data repeatable compared to
14 these costs? Maybe you should look into the
15 lowest-cost one and the highest-cost one, look at
16 the data quality. If you want that kind of data,
17 it'll be cheaper, probably.

18 And how polluted are the sites? The more
19 pollution, the more cost of sampling. And travel
20 time. Is -- did you guys consider the travel
21 time, how much it takes to do all of that? And
22 these are some of the concerns I have.

23 The data looks good, the data looks good

1 for presentation, but there are so many things
2 that you guys have to look into. For a person
3 who do not know anything and who do not sample
4 this, it looks like something is going wrong.
5 But there's so many details into this, and I
6 wanted to bring it to your attention.

7 Thank you.

8 CHAIRMAN EHRMAN: Thank you.

9 Okay. That's our last card. Is there
10 anyone else that would like to speak to the Board
11 today?

12 MS. KING: On the rule.

13 AUDIENCE MEMBER: Is this on the
14 rule?

15 CHAIRMAN EHRMAN: On the rule; I'm
16 sorry. No takers?

17 (No response.)

18 CHAIRMAN EHRMAN: Okay. Anyone from
19 the Board who would like to speak?

20 (Discussion off the record.)

21 CHAIRMAN EHRMAN: Okay. The hearing
22 is now concluded. Board action on preliminary
23 adoption of amendments to 328 IAC 1. Do we have

1 any questions on the preliminary adoptions?

2 (No response.)

3 CHAIRMAN EHRMAN: Do we have an
4 approval?

5 MS. KING: You need a motion to
6 approve.

7 CHAIRMAN EHRMAN: Motion to approve?

8 MR. FORSTER: So moved.

9 MR. COBB: Second.

10 CHAIRMAN EHRMAN: Okay. Voice -- all
11 in favor?

12 MS. SMITH: Aye.

13 MR. COBB: Aye.

14 MR. FORSTER: Aye.

15 MR. NAVARRE: Aye.

16 MR. PRASAD: Aye.

17 MS. LOGAN: Aye.

18 CHAIRMAN EHRMAN: Aye.

19 Thank you. It's been approved. The Board
20 has preliminarily adopted the ELTF rule
21 amendments.

22 This is the Open Forum time. Is there
23 anyone else that would like to have a say-so,

1 would like to speak?

2 Happy Birthday.

3 MR. BRAUN: Thank you. Thank you.

4 I'm feeling very old today, so it's my 58th

5 birthday, my 26th year attending these things,

6 so --

7 AUDIENCE MEMBER: Wow.

8 MR. BRAUN: A couple of things I want

9 to highlight for the Board, just to underscore

10 the progress that has been made with the help of

11 IDEM, IDEM's adoption and incorporation of the

12 legislation the last two years, and they have

13 moved ahead with a lot of recommendations from

14 two audits that the FAB approved this past year.

15 The first one is on page two of today's

16 packet, so after the agenda, the first page.

17 Look under "Claims Paid." The number there is in

18 excess of 51 million. If you compare that to

19 Schedule A -- no, I'm sorry; compare it to

20 Schedule C.

21 You can see that the annual totals on

22 claims, claims received was 60 million this year,

23 which was a very high number, it's the third

1 highest in the last ten years. Then if you go to
2 Schedule D, compare the amount there that's been
3 approved each year, it's about a 20 percent
4 increase over previous years. So, we had --
5 these are round numbers -- about 60 million
6 claims, 51 million was paid. In previous years
7 we've averaged 35 to 39 million, so a dramatic
8 increase.

9 So, the work of staff at both the IDEM and
10 ELTF in terms of moving things along, I've heard
11 a lot of feedback from tank owners and
12 consultants about how the folks at IDEM and the
13 ELTF claim reviewers are picking up the phone and
14 calling or sending e-mails if they have
15 questions, and are getting questions answered and
16 documentation submitted instead of denying and
17 going through the whole process again.

18 Which, as I think it was Amy indicated
19 earlier, on Schedule A, you can see a dramatic
20 reduction in the last three months of
21 resubmission of claims, where July of last year,
22 it was 34, and the last few months it's two, six,
23 and four.

1 Look at the dollar amounts involved. In
2 March of this year it was \$990,000 of resubmitted
3 claims, the next month it was 11,000. I mean
4 it's a dramatic change, and one that's greatly
5 appreciated by the tank owners.

6 If you also -- one of the things that we
7 had pushed for was the paydown of the Speedway
8 claim, and I got it on good information earlier
9 that the net figure there of 8.6 million on
10 Schedule D that's owed to Speedway on delayed
11 payment, that's the net figure after the
12 9.9-million-dollar payment was made on July 1st.
13 So, if everything falls jelly side up, a year
14 from now we will have the Speedway claim finally
15 repaid in full and be on a current basis. So,
16 that would be fantastic.

17 And I want to second Doug's comments
18 earlier, because for years we have -- the IPCA
19 has felt very strongly that the FAB and those who
20 are stewards of the fund have a fiduciary duty to
21 manage the fund in a very thoughtful way, and
22 they have moved more progress in the last 24
23 months than, quite frankly, I think we've seen in

1 a decade before that.

2 It's been tremendous, and we certainly
3 support -- it doesn't mean there won't be hiccups
4 along the way, there will be, but we're really
5 moving in a very positive direction here, and
6 it's from -- everything from the inspection
7 program that Tom's talked about and others.

8 And so, we're seeing the sustainable,
9 repeatable processes that will allow consistency
10 across the board, that will give certainty for
11 tank owners, because at the beginning -- at the
12 end of the day, this fund is here to provide a
13 financial mechanism to assure and comply with
14 federal law that tank owners can meet their
15 financial responsibilities.

16 And one of the things we've talked about
17 in the past and will continue to talk about is
18 for tank owners, it's all about the date of the
19 release being discovered to NFA, and the more we
20 can shrink that, the better.

21 And the numbers that were given at the
22 last Board meeting -- I'm going to use just rough
23 numbers -- for cleanups that were less than ten

1 year -- from inception through conclusion -- that
2 were less than ten years, it was about 150,000,
3 roughly, cleanup costs. For those that were
4 beyond ten years, the average cost was north of
5 500,000, close to 600,000.

6 And when you go out -- and I appreciate
7 immensely the breakdown, the analysis on the
8 quarterly monitoring, because for us, the lag
9 time between when an ISC gets submitted and when
10 we get approval, all we're doing is going back
11 now and confirming it's still contaminated.

12 And the lag time from the time you get ISC
13 approval to getting CAP approved is -- you're
14 just going out and you're spending money to
15 confirm what you already know, and that site's
16 still contaminated because there's been no
17 remediation.

18 And so, the more we can break it down and
19 analyze that -- I'm a data driven lawyer, and so,
20 for me, data means everything, and you build
21 policies around the numbers that are accurate,
22 and what IDEM is doing now is fantastic in that
23 regard, really across the Board. So, we think

1 that the improvements have been superb. I'm very
2 excited about some of the additional improvements
3 they're talking about doing.

4 I think the next rulemaking will also be
5 very exciting, but I think, you know, when you
6 look at today's adoption of these rules, you
7 know, it wasn't too many years ago when there
8 were -- you were flooded with comments by people
9 who had differing views, and there's been a
10 tremendous amount of work on it on the front end
11 to develop consensus.

12 So, when you see legislation adopted
13 in 2016, when you see it adopted in 2017, without
14 really objection or pushback by a variety of
15 interest groups, that speaks volumes about the
16 consensus that's being developed around a common
17 goal of where we're trying to get to, and that is
18 to have an ELTF fund that is viable.

19 You know, a lot of the states, they're
20 bankrupt or they're underfunded or they get
21 raided periodically, and we're in a
22 tremendous opportunity and window right now to
23 move forward, to make tremendous progress.

1 We still have ways to go, and we've got to
2 keep shrinking the time to get to NFA, because
3 for us, it's NFA, NFA, NFA. What we can do as
4 tanker owners to assist that process, we're
5 certainly willing to roll up our sleeves and help
6 and continue to work with IDEM.

7 So, whether it's on the application end --
8 and we work with lots of consultants around the
9 state, and there are a lot of outstanding
10 environmental consultants, and I know that their
11 education has gone up and they've done a very
12 good job of understanding the rules as they
13 continue to evolve, so it's a team effort. So,
14 when you have all of the stakeholders involved
15 making these kinds of investments of time and to
16 make progress, just know it is not going
17 unnoticed.

18 And so, Doug and the rest of your team,
19 it's really -- and Amy -- it's really been
20 exciting to see, and I just let you know that we
21 will continue to work closely with you and the
22 others to embrace these changes and move forward.

23 So, with that, thank you.

1 CHAIRMAN EHRMAN: Thank you, Chris,
2 for those comments. And thank IDEM for the
3 improvements.

4 That's all we have today. Thank you for
5 the meeting. Motion to adjourn?

6 MR. COBB: Motion to adjourn.

7 CHAIRMAN EHRMAN: Second?

8 MR. NAVARRE: Second.

9 CHAIRMAN EHRMAN: Motion to close.

10 Thank you.

11 - - -
12 Thereupon, the proceedings of
13 August 10, 2017 were concluded
14 at 3:01 o'clock p.m.
15 - - -

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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 Thursday, August 10, 2017 in this matter and
8 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.

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