

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

November 9, 2022

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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF NOVEMBER 9, 2022

- - -

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, at the Indiana
Government Center South, Conference Center,
Room A, 402 West Washington Street, Indianapolis,
Indiana, on Wednesday, November 9, 2022 at 1:32
o'clock p.m.

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1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Carrie Kozyrski
5 R. T. Green
6 Dr. Ted Niemiec
7 Dr. Joanne Alexandrovich
8 John Ketzenberger
9 Ken Rulon
10 William Etzler
11 Chris Horn
12 Calvin Davidson
13 Dan Bortner, Proxy, Department of
14 Natural Resources
15 Emily Totten, Proxy, Indiana Economic
16 Development Corporation
17 Katherine Nelson, Proxy, Lieutenant
18 Governor
19 Brian Rockensuess, IDEM Commissioner
20 (Nonvoting)

21 IDEM STAFF MEMBERS:

22 Chris Pedersen
23 Seth Engdahl
24 Dan Watts
25 Krystal Hackney
26 Lynette Schrowe
27 Nilia Moberly Green
28 Peggy Dorsey
29 Michael Habeck
30 Paul Higginbotham
31 Nancy King
32 Matt Stuckey
33 Jenny Acker
34 Kevin Bump
35 Karla Kindrick

36 PUBLIC SPEAKERS:

37 Craig Williams

38 - - -

39

1 1:32 o'clock p.m.
2 November 9, 2022

3 - - -

3 CHAIRMAN GARD: I want to thank all
4 of you for being here, first of all. It's the
5 first time we've seen each other in person for
6 quite some time, and some of us look a little
7 different than we did three years ago, so it's
8 nice to see everyone.

9 We do have a quorum, so I will call the
10 meeting of the Indiana Environmental Rules Board
11 to order, November 9th, 2022, at 1:33 p.m. I
12 will need to call the roll, since I think we do
13 have a couple of people that are still remote.

14 Dr. Alexandrovich?

15 DR. ALEXANDROVICH: Here.

16 CHAIRMAN GARD: Mr. Bortner?

17 MR. BORTNER: Here.

18 CHAIRMAN GARD: Mr. Davidson?

19 MR. DAVIDSON: Here.

20 CHAIRMAN GARD: Mr. Etzler?

21 MR. ETZLER: Here.

22 CHAIRMAN GARD: Mr. Green?

23 MR. GREEN: Here.

1 CHAIRMAN GARD: Mr. Horn?

2 MR. HORN: Present.

3 CHAIRMAN GARD: Mr. Ketzenberger?

4 MR. KETZENBERGER: Here.

5 CHAIRMAN GARD: Ms. Kozyrski?

6 MS. KOZYRSKI: Here.

7 CHAIRMAN GARD: Ms. Nelson?

8 MS. NELSON: Here, on-line.

9 CHAIRMAN GARD: Dr. Niemiec?

10 DR. NIEMIEC: Here.

11 CHAIRMAN GARD: Mr. Rulon?

12 MR. RULON: Here.

13 CHAIRMAN GARD: Mr. Rockensuess?

14 COMM. ROCKENSUESS: Here.

15 CHAIRMAN GARD: Ms. Totten?

16 MS. TOTTEN: Here.

17 CHAIRMAN GARD: And the Chair is

18 present.

19 I do want to welcome Emily Totten, who is
20 replacing Mark Wasky as the proxy for the IEDC,
21 Indiana Economic Development Corporation.

22 Now, would Barry Sneed please discuss the
23 logistics of the meeting?

1 MR. BUMP: Actually, it'll be Kevin
2 Bump today.

3 CHAIRMAN GARD: Huh?

4 MR. BUMP: It'll be Kevin Bump today.

5 CHAIRMAN GARD: Okay.

6 MR. BUMP: All participants will be
7 muted when they join the meeting, but
8 participants will be able to address the Board
9 during the Open Forum portion of the meeting. We
10 do ask that you identify yourself when speaking.
11 Participants can only send chat messages through
12 the host.

13 For those joining us via Zoom, if you have
14 a question or a technical issue during the
15 meeting, please use the raised hand or chat
16 feature. To access the raised hand and chat
17 feature, at the bottom or top of your screen,
18 depending on your device, you will see a menu
19 bar. You may have to move your mouse or touch
20 your screen for the menu bar to pop up.

21 In the middle of that menu there is a chat
22 icon which you can click on to show the chat
23 dialogue. You should also see the raised hand

1 option. Please utilize the raised hand or chat
2 features if you have any questions or comments,
3 and you'll be called upon at the appropriate
4 time.

5 If any members of the media have joined us
6 via Zoom, please utilize the chat feature, or
7 e-mail media@idem.in.gov, if you have any
8 questions.

9 CHAIRMAN GARD: Are there questions?

10 MR. BUMP: Not at this time.

11 CHAIRMAN GARD: Okay. I think
12 everybody's getting pretty used to this.

13 The next thing is to approve the summary
14 of the September 14th, 2022 Board meeting. Are
15 there any additions or corrections to the one
16 that was distributed after -- after the package
17 went out?

18 (No response.)

19 CHAIRMAN GARD: Okay. Is there a
20 motion to approve?

21 DR. NIEMIEC: So moved, Ted Niemiec.

22 CHAIRMAN GARD: All in favor, say
23 aye.

1 MR. HORN: Aye.

2 MS. NELSON: Aye.

3 DR. ALEXANDROVICH: Aye.

4 MR. BORTNER: Aye.

5 MR. ETZLER: Aye.

6 MR. RULON: Aye.

7 MR. DAVIDSON: Aye.

8 MR. GREEN: Aye.

9 MR. KETZENBERGER: Aye.

10 DR. NIEMIEC: Aye.

11 MS. TOTTEN: Aye.

12 MS. KOZYRSKI: Aye.

13 CHAIRMAN GARD: Aye.

14 Opposed, nay.

15 (No response.)

16 CHAIRMAN GARD: Okay. The summary is
17 approved.

18 Comm. Rockensuess for the agency report.

19 COMM. ROCKENSUESS: Good afternoon,
20 everyone. I have a couple of things to go over.

21 First is, I'm sure you may have heard in
22 the news, the long-awaited compensation study
23 finally came out. What does this mean for IDEM?

1 Across the agency, we had about, on average, a
2 22-percent increase for staff wages. Some people
3 got more, some people got less. The minimum you
4 would get would be five percent, and that five
5 percent really was -- that meant you were or near
6 market rates for that position.

7 To give a little context, a study of this
8 magnitude has not been done since the '70's. It
9 was over all 800 job classifications in the
10 state. It benchmarked 200 of those, so like if
11 you had -- like accountants are easy. You have
12 Accountant I, II, III and IV. You would
13 benchmark Accountant I, then you'd follow up the
14 rest of them after that. So, it really was a
15 tremendous effort by the State Personal
16 Department and the Governor's Office.

17 On average, across the state, our -- the
18 wages for our employees were 30 percent below
19 prevailing minimum, the equal of market or
20 nonprofit world. So, it was necessary to make
21 this move in a two-year period. In 2019 and
22 '20 -- well, they measured '19, '20 and '21.
23 In '21, we lost more high performers than in 2020

1 and 2019 combined. We -- and as a state,
2 overturned almost a third of our employees in a
3 two-year period.

4 So, this was definitely a necessary step
5 to maintain our employees. The number one
6 question I get when I'm talking to anybody,
7 whether they're regulated or not, is, "Your
8 inspectors and your permit writers and all of
9 your staff, they keep -- I keep seeing new
10 people. What happened to the old folks?" And
11 I'm sure Dan's in that same boat at DNR.

12 MR. BORTNER: Absolutely.

13 COMM. ROCKENSUESS: And so, what our
14 folk -- what our permittees and our stakeholders
15 want is consistency, and with that, we need to be
16 able to maintain the people that we have, and
17 this goes a long way to meeting that effort.

18 CHAIRMAN GARD: When does this go
19 into effect?

20 COMM. ROCKENSUESS: It did.

21 CHAIRMAN GARD: It did?

22 COMM. ROCKENSUESS: It did. So,
23 every -- all employees got their new pay raise on

1 their paycheck today. So, it went effective
2 October 16th, and then that pay is today. So, it
3 was a really awesome effort, and I really applaud
4 and am proud of the administration for taking
5 this on, because all of our agencies have been
6 really struggling, and we've frankly been
7 needing each other to get people.

8 And just anecdotally, I've heard from
9 three different managers, from three different
10 areas of the agencies -- from my agency -- and
11 just the period of time where this was announced
12 to today, vacancies that we've had open for
13 months now have eight, nine, ten applicants in
14 them. So, it's having a big -- it's creating a
15 big deal for our agency, and I'm sure for DNR and
16 many of the other agencies across the state,
17 which is awesome.

18 Second is: Our legislative agenda is set.
19 We're going to be working on two air items.
20 First is air fees. You guys increased our air
21 fees a couple of years ago, I think about 27
22 percent, and by a year and a half later, that
23 money that we raised -- it was about two million

1 or so -- was gone, and that's because the
2 emissions in the state went down tremendously.
3 Sulfur dioxide was a big one of those. It --
4 we're down 92, 93 percent. Matt could probably
5 correct me on the percentage.

6 MR. STUCKEY: Close enough.

7 COMM. ROCKENSUESS: But that has a
8 huge impact to our financing when we're charging
9 based on the tons you emit. So, we're going back
10 to the legislature to get another relief, because
11 we have to be able to fund our folks. You know,
12 at the time it was great, now we've got to fund
13 it.

14 And so, Sen. Messmer will be carrying the
15 bill to begin with. It simply just removes right
16 now air from that list of not more than ten
17 percent every five years. It gives them a little
18 bit more flexibility, which they've always had in
19 the past.

20 And then the other item, and I think you
21 guys all might enjoy this, is, you know, we do
22 these emergency rules almost every Board meeting
23 on designations. We're striking that from the

1 Code, so you don't have to do the designations
2 anymore. As soon as they become effective by the
3 Federal Government, they'll be effective in the
4 State of Indiana.

5 That was something that was put into Code
6 whenever we decided to take on the Clean Air Act,
7 and it assumed that we were going to be doing the
8 designations, which we have never done, it's
9 always been EPA. So, we're removing that step.
10 So, you know, when things -- when we go from
11 attainment to nonattainment, that's effective
12 immediately.

13 When we go from nonattainment to
14 attainment, that takes multiple Board rulemakings
15 to make effective. And so, if we strike this,
16 it'll just become effective immediately, which
17 helps business in the state and helps people be
18 able to expand if they're in a nonattainment
19 area, and it helps with our permitting.

20 So, those are the two main -- we're
21 keeping our agenda pretty light, because we don't
22 know really what we're walking into this next
23 session, so it's -- obviously monetarily we need

1 that, and then there was a lot of focus on
2 rulemaking and emergency rulemaking this summer.
3 Well, the emergency rules we do, if we can get
4 rid of that, that goes a long way for those
5 legislators wanting to do something.

6 So -- and obviously the budget. We have
7 the budget. We're still waiting on SBA to let us
8 know what has been approved or not approved, and
9 once that is announced, then I'll be able to
10 explain a little bit more on what we're asking
11 for and why.

12 And then finally -- well, two more things.
13 Peggy will be giving a presentation today on the
14 last of the NPD's for the remediation closure
15 guides. You guys have seen a lot of these
16 recently, and I just want to remind everyone that
17 we used to have this massive document that
18 applied to all of our cleanup programs.

19 We've broke that out into each individual
20 cleanup program, so everybody could quickly, if
21 you're in VRP, you can go and grab that cleanup
22 program, if you're in state claim, you can grab
23 that cleanup program, so you didn't have to read

1 this massive document. We'll be concluding those
2 today, and Peggy will be presenting.

3 And then finally, the last thing, is Nancy
4 wanted me to remind you all, ethics training
5 needs to be completed. We just got a note from
6 our ethics officer, and I know she's reached out
7 to all of you, so I just want to remind you of
8 that.

9 That's it from me.

10 CHAIRMAN GARD: On the rulemaking
11 issues, I know you were following it really
12 closely, but could -- what -- was there a study
13 committee this summer?

14 COMM. ROCKENSUESS: A task force.

15 CHAIRMAN GARD: Do you think they
16 understand better the --

17 COMM. ROCKENSUESS: So --

18 CHAIRMAN GARD: -- IDEM's process?

19 COMM. ROCKENSUESS: -- yeah, I do
20 believe they do know, and Parvonay Stover and I
21 met with Sen. Garten. He was one of the heads of
22 the task force. We met with him last week, and
23 prior to the end of that task force, we provided

1 them with a pretty lengthy document explaining
2 our rulemaking process, how it's laid out in
3 statute.

4 We laid out what we do, and then we laid
5 out the statute next to it, so they could see
6 everything we do is statutory, and that went a
7 long way to helping that task force understand
8 what we do and how we are different than the
9 majority of rulemaking boards in the state. And
10 he was really happy with the information we
11 provided, and he seemed -- he seemed to think we
12 were doing pretty well.

13 So, hopefully we are not the -- you know,
14 the ire of the legislature this coming session.
15 I don't know about all of the other rule boards,
16 but ours is definitely specifically defined in
17 statute, which helps us. And that's a credit to
18 you, because you passed the legislation.

19 CHAIRMAN GARD: We worked on those
20 for lots of years, actually, in the early '90's.

21 COMM. ROCKENSUESS: So --

22 CHAIRMAN GARD: Okay. Any questions
23 for the Commissioner?

1 (No response.)

2 CHAIRMAN GARD: Okay. Chris Pedersen
3 for the rulemaking report.

4 MS. PEDERSEN: Good afternoon. I'm
5 Chris Pedersen in the Rules Development Section
6 of the Office of Legal Counsel.

7 Our next Board meeting is tentatively
8 scheduled for March 8th of 2023, and at that
9 meeting we anticipate presenting three rules for
10 final adoption that are going to be presented to
11 you today for preliminary adoption. Those are
12 Safety-Kleen SO₂, the Definition of Solid Waste
13 for Hazardous Waste Management, and the
14 Underground Storage Tank Revisions Rule.

15 In addition, there are two other rules
16 that may be ready for presentation at that time.
17 The first is the adoption of the regular
18 rulemaking for the Clark, Floyd, Lake and Porter
19 Counties ozone redesignations as well as the
20 emergency rule that will be presented to you
21 today, and that will need to be adopted again
22 until the regular rulemaking is completed.

23 Also, preliminary adoption of the Coal

1 Combustion Residuals Rule. This rule will
2 establish a state permitting program for the
3 disposal of coal combustion residuals based on
4 the recent federal rule and in accordance with
5 state statute. The rule will incorporate by
6 reference federal requirements with some
7 state-specific revisions for consistency with the
8 existing state requirements and to offer
9 compliance alternatives and flexibility to
10 closely align with the existing permit
11 requirements and the existing permit program for
12 the surface impoundments and landfills. The
13 draft rule is currently with OMB for review, and
14 we hope to be able to publish the second notice
15 of comment period within the next several weeks.

16 And I need to mention the emergency rule
17 that's before you today will also be presented
18 again in March.

19 I'm happy to answer any other que -- any
20 questions from Board Members about the
21 rulemakings before moving on to the Air
22 Permitting Report.

23 CHAIRMAN GARD: Any questions?

1 (No response.)

2 MS. PEDERSEN: All right. I just
3 wanted to mention the Air Permitting Report
4 that's in your Board packet and is provided to
5 you each year. Jenny Acker, from the Air Permits
6 Branch, she is available to answer questions if
7 you have any after reviewing that document.

8 All right. Thank you.

9 CHAIRMAN GARD: Okay. Thank you.

10 Nancy King is going to talk to the Board
11 about the attendance policy.

12 MS. KING: Thank you, Chairman Gard.
13 Thank you all for your attendance today.

14 As you all received the note that I
15 provided to you regarding our attendance policy
16 that we passed, at the time I was not aware of
17 the changes that had happened to that particular
18 aspect of the Code. The changes were pretty
19 minimal, and they do not impact the policy that
20 you all passed.

21 The requirements that are imperative to
22 us, and most of them kind of haranguing you to
23 attend, is that there must be at each of our

1 Board meetings at least six of our members
2 physically present. That is -- that still
3 comports with the existing statute, and each
4 Board member is required to be present for at
5 least one meeting per year. And as we're
6 currently on a quarterly basis, it's the same,
7 there's no -- there's no number of Board meetings
8 required for that to take effect.

9 The changes that occurred under the
10 statute, which is Indiana Code 5-14-1.5-3.6, were
11 pretty minor, really. They really -- the primary
12 thing they did was take into account the concept
13 that there are certain aspects that do not apply
14 if at least 51 percent of the governing body,
15 which is the governing body is the Board for
16 which you are appointed, membership consists of
17 individuals with a disability or individuals
18 with -- who have a significant disability.

19 So, it was -- there were a couple of
20 changes to basically recognize that we have
21 certain boards for which physical disabilities
22 make it more difficult for people to be there in
23 person. So, there was nothing as it relates to

1 the existing policy that you all adopted that
2 needs to change at all.

3 That said, obviously any time you want to
4 discuss this policy as a Board and look at
5 changes to it, that's something we can always do.
6 That's still allowed under the statute. But I
7 very much appreciate the fact that you all
8 attended.

9 The one concern I have, we all got used to
10 Zoom meetings, we're still having them and, you
11 know, they're really great, especially when you
12 come from all over the state, and I understand
13 that many of you do, and we do very much
14 appreciate that you come.

15 But that said, I think that the thing that
16 concerns me is if we are -- if we violate the
17 policy in some way, then the rulemaking actions
18 that occur can be challenged, and then we have to
19 start all over again. And since we have this
20 long and wonderful process that the legislature
21 now likes, thanks to Brian's help, it does take a
22 while. So, we would like to, as much as
23 possible, keep that in mind.

1 So, I very much appreciate the fact that
2 when Karla reaches out, if you can let her know
3 your attendance and when you're going to be here,
4 then we can make sure that, you know, we're still
5 following the policy. And again, any time you
6 all want to discuss the policy or revisit it,
7 that's certainly something we can look at.

8 I'm happy to answer any questions you
9 might have.

10 CHAIRMAN GARD: Any questions?

11 (No response.)

12 CHAIRMAN GARD: Thank you.

13 MS. KING: Thank you.

14 CHAIRMAN GARD: Today we have one
15 emergency rule, Clark, Floyd, Lake, and Porter
16 Counties Ozone Redesignations. We will also have
17 hearings for the following regular rule Board
18 actions: Final adoption of Ignitable Hazardous
19 Waste; preliminary adoption of Safety-Kleen SO2
20 Revisions; Definition of Solid Waste; Underground
21 Storage Tank Revisions.

22 There will be presentations for six
23 Nonrule Policy Documents: For Soil Management

1 Plan and Waste, 0075-NPD; State Cleanup Program
2 Guide, Waste, 0076-NPD; Voluntary Remediation
3 Guide, Waste, 077-NPD; Petroleum Remediation
4 Program Guide, Waste, 0082-NPD; R -- RCRA Closure
5 and Corrective Action Guide, Waste, 0015-NPD-R1;
6 Institutional Controls Program, Waste, 0081-NPD.

7 And finally, an update on the Citizen's
8 Petition to request rulemaking on the 1220 EPA
9 Recreational Water Qualities Criteria.

10 As a reminder, if you wish to testify at
11 any of today's hearings, please fill out a
12 comment card and give it Karla Kindrick at the
13 sign-in table.

14 The rules being considered today at
15 today's meeting were included in the Board
16 packets and are available for public inspection
17 at the Office of Legal Counsel, 13th floor,
18 Indiana Government Center North. The entire
19 Board packet also available on IDEM's Web site at
20 least one week prior to each Board meeting.

21 A trans -- a written transcript of today's
22 meeting will be made. The transcript and any
23 written submission will be open for public

1 inspection at the Office of Legal Counsel. A
2 copy of the transcript will be posted on the
3 Rules page of the agency Web site when it becomes
4 available.

5 Will the official reporter for the cause
6 please stand, raise your right hand, and state
7 your name?

8 (Reporter sworn.)

9 CHAIRMAN GARD: Thank you.

10 The Board will now consider adoption of an
11 emergency rule for Eight-Hour Ozone
12 Redesignations for Clark, Floyd, Lake, and Porter
13 Counties. This emergency rule temporarily
14 incorporates the current federal designation.

15 I will now introduce Exhibit A, the draft
16 emergency rule, into the record of the hearing.

17 Seth Engdahl will present the emergency
18 rule.

19 MR. ENGDAHL: Members of the Board,
20 good afternoon. My name Seth Engdahl, and I'm a
21 Rule Writer in the Rules Development Section
22 within IDEM's Office of Legal Counsel.

23 The emergency rule under consideration

1 seeks to make several temporary changes to rules
2 found at 326 IAC 1-4 and 326 IAC 2-6-1. First,
3 this emergency rule would supersede
4 326 IAC 1-4-11 and 326 IAC 1-4-23 to change the
5 status of Clark and Floyd Counties from marginal
6 nonattainment to attainment for the 2015
7 Eight-Hour National Ambient Air Quality
8 Standards, or NAAQS, for ozone. U.S. EPA granted
9 this status on July 5th, 2022 after receiving a
10 redesignation request by IDEM.

11 Second, the emergency rule would supersede
12 326 IAC 1-4-46 and 326 IAC 1-4-65 to change the
13 status of Lake and Porter Counties from serious
14 nonattainment to attainment for the 2008 NAAQS
15 for ozone. U.S. EPA granted this status on
16 May 20th, 2022. The Board approved two separate
17 emergency rules at the previous Board meeting
18 that temporarily make these changes.

19 Third, this rulemaking will make an
20 additional temporary change to the status of
21 certain townships in Lake and Porter County for
22 the 2015 NAAQS for ozone. Specifically, the
23 northern townships of these counties are being

1 bumped up from marginal nonattainment to moderate
2 nonattainment. This is in response to a
3 designation granted by U.S. EPA on October 7th,
4 2022.

5 Finally, this emergency rule would also
6 temporarily remove Clark, Floyd, and the southern
7 townships of Lake and Porter Counties from
8 326 IAC 2-6-1. This section lists sources
9 applicable to emissions reporting requirements.
10 Since these areas are now in attainment of all
11 ozone NAAQS, it is no longer necessary to have
12 them in this section.

13 I would note that the full rulemaking to
14 make these changes permanent is currently under
15 review and will likely be presented at the next
16 Board meeting.

17 IDEM requests that the Board approve this
18 rule as presented, and I'm happy to answer any
19 questions that you may have.

20 CHAIRMAN GARD: Are there any
21 questions?

22 DR. ALEXANDROVICH: Just one quick
23 one. I thought the emergency rules were

1 effective for three months. Is that right?

2 MR. ENGDAHL: Ninety days, yes.

3 DR. ALEXANDROVICH: So, our next
4 meeting is in four months. Is that going to
5 create an issue?

6 MR. ENGDAHL: So, this rule will take
7 effect -- we're going to submit this one on
8 December 15th. There's two currently in effect
9 that will expire on December 15th, so this one
10 will be submitted -- this will take us to
11 approximately March 14th, I believe, and so, the
12 next rules meeting will be on -- what is it;
13 March 8th or 9th?

14 DR. ALEXANDROVICH: Yeah, March 8th.

15 MR. ENGDAHL: So, then once that's
16 approved, we can then submit the next -- or
17 whenever -- yeah, on March 14th, and then it'll
18 be effective the following day. So --

19 DR. ALEXANDROVICH: Okay.

20 MR. ENGDAHL: -- we've timed it out.

21 DR. ALEXANDROVICH: Okay.

22 CHAIRMAN GARD: Okay.

23 Any other questions?

1 (No response.)

2 CHAIRMAN GARD: I need a motion to
3 adopt the emergency rule.

4 MR. RULON: So moved, Ken Rulon.

5 DR. ALEXANDROVICH: Second,
6 Alexandrovich.

7 CHAIRMAN GARD: This will be a roll
8 call.

9 Dr. Alexandrovich?

10 DR. ALEXANDROVICH: Yes.

11 CHAIRMAN GARD: Mr. Bortner?

12 MR. BORTNER: Yes.

13 CHAIRMAN GARD: Mr. Davidson?

14 MR. DAVIDSON: Yes.

15 CHAIRMAN GARD: Mr. Etzler?

16 MR. ETZLER: Yes.

17 CHAIRMAN GARD: Mr. Green?

18 MR. GREEN: Yes.

19 CHAIRMAN GARD: Mr. Horn?

20 MR. HORN: Yes.

21 CHAIRMAN GARD: Mr. Ketzenberger?

22 MR. KETZENBERGER: Yes.

23 CHAIRMAN GARD: Ms. Kozyrski?

1 MS. KOZYRSKI: Yes.

2 CHAIRMAN GARD: Ms. Nelson?

3 MS. NELSON: Yes.

4 CHAIRMAN GARD: Dr. Niemiec?

5 DR. NIEMIEC: Yes.

6 CHAIRMAN GARD: Mr. Rulon?

7 MR. RULON: Yes.

8 CHAIRMAN GARD: Ms. Totten?

9 MS. TOTTEN: Yes.

10 CHAIRMAN GARD: And the Chair votes
11 aye. Thirteen -- thirteen ayes and zero nays.
12 The motion has passed.

13 This is a public hearing before the
14 Environmental Rules Board of the State of Indiana
15 concerning final adoption of amendments to rules
16 at 329 IAC 3.1-6-1, Ignitable Hazardous Waste.

17 I will now introduce Exhibit B, the draft
18 rule, into the record of the hearing.

19 Dan Watts will present the rule.

20 MR. WATTS: Good afternoon,
21 Chairwoman Gard and members of the Board. I'm
22 Dan Watts of the Rules Development Section and I
23 am presenting LSA Document 22-216 for final

1 adoption. This rulemaking amends the Hazardous
2 Waste Rules in 326 IAC 3.1-6 with the
3 incorporation by reference of recent federal
4 updates to the identification of ignitable liquid
5 hazardous waste.

6 Because the rulemaking only includes
7 federal requirements without additional state
8 proposed requirements, IDEM is using the
9 abbreviated rulemaking process authorized under
10 IC 13-14-9-7, which bypasses the first notice of
11 comment period.

12 The rule requirements include modernized
13 test methods for making hazardous waste
14 determinations for ignitable hazardous waste --
15 ignitable liquid hazardous waste -- and the main
16 changes provide flexibility in the testing
17 methods for ignitable liquid waste and eliminate
18 requirements to use mercury-containing
19 thermometers.

20 Because the rulemaking provides additional
21 compliance options, affected entities are not
22 required to use these updated test methods and
23 still can use the legacy test methods. However,

1 the updated test methods are lower cost to
2 administer over time and have environmental
3 benefits compared to the current test methods.

4 This rule also is a component of
5 administering an authorized state hazardous waste
6 program, in which IDEM must maintain requirements
7 that are consistent with and no less stringent
8 than the federal hazardous waste requirements.
9 In this case, the federal rules proposed for
10 adoption are neither more nor less stringent than
11 current requirements, but offer potential
12 compliance options with cost savings for
13 regulated entities.

14 Representatives from IDEM are available to
15 answer any questions you may have for this
16 rulemaking, and the Department requests that the
17 Board adopt this rule so Indiana's authorized
18 hazardous waste program can be consistent with
19 current federal hazardous waste rules for the
20 affected waste streams and industry sectors.

21 Thank you.

22 CHAIRMAN GARD: Are there any
23 questions of Dan?

1 (No response.)

2 CHAIRMAN GARD: Thank you.

3 Are there any speaker cards?

4 MS. KINDRICK: No, ma'am.

5 CHAIRMAN GARD: Is there anyone that
6 wishes to speak to the issue?

7 (No response.)

8 CHAIRMAN GARD: Then the hearing is
9 concluded. The Board will now consider final
10 adoption of amendments to rules at
11 329 IAC 3.1-6-1, Ignitable Hazardous Waste.

12 Is there any further Board discussion?

13 (No response.)

14 CHAIRMAN GARD: Is there a motion to
15 adopt the rule as presented?

16 MR. BORTNER: So moved, Madam Chair.

17 CHAIRMAN GARD: Is there a second?

18 MR. RULON: Second.

19 CHAIRMAN GARD: This will be a roll
20 call.

21 Dr. Alexandrovich?

22 DR. ALEXANDROVICH: Yes.

23 CHAIRMAN GARD: Mr. Bortner?

1 MR. BORTNER: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Etzler?

5 MR. ETZLER: Yes.

6 CHAIRMAN GARD: Mr. Green?

7 MR. GREEN: Yes.

8 CHAIRMAN GARD: Mr. Horn?

9 MR. HORN: Yes.

10 CHAIRMAN GARD: Mr. Ketzenberger?

11 MR. KETZENBERGER: Yes.

12 CHAIRMAN GARD: Ms. Kozyrski?

13 MS. KOZYRSKI: Yes.

14 CHAIRMAN GARD: Ms. Nelson?

15 MS. NELSON: Yes.

16 CHAIRMAN GARD: Dr. Niemiec?

17 DR. NIEMIEC: Yes.

18 CHAIRMAN GARD: Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Ms. Totten?

21 MS. TOTTEN: Yes.

22 CHAIRMAN GARD: The Chair votes aye.

23 That's thirteen ayes, zero nays. The rule has

1 been adopted.

2 This is a public hearing before the
3 Environmental Rules Board of the State of Indiana
4 concerning preliminary adoption of amendments to
5 rules at 326 IAC 7-4.1-6, Ignitable Hazardous
6 Waste [sic].

7 I will now introduce Exhibit C, the draft
8 rule, into the record of the hearing.

9 Krystal Hackney will present the rule.

10 MS. HACKNEY: Good afternoon, members
11 of the Board. My name is Krystal Hackney, and
12 I'm a rule writer in the Rules Development
13 Section within the Office of Legal Counsel. Just
14 a quick clarification. This is going to be for
15 the Safety-Kleen Sulfur Dioxide Monitoring and
16 Fuel Sampling Updates Rule.

17 So, I am here to present Rule No. 22-38
18 for Safety-Kleen Sulfur Dioxide Monitoring and
19 Fuel Sampling Updates at 326 IAC 7-4.1-16.
20 Safety-Kleen was found to be in violation of
21 their SO2 emission limits, causing an enforcement
22 action to be issued by IDEM. Safety-Kleen has
23 updated their SO2 monitoring method for process

1 heaters H-201 and H-401 using continuous emission
2 monitor systems, also known as CEMS.

3 An Agreed Order was developed and made
4 effective on October 20th, 2021 between
5 Safety-Kleen and IDEM to provide clear
6 instruction for compliance with the state SO2
7 regulations with a deadline of May 30th, 2022,
8 for installation and certification of the CEMS.

9 Safety-Kleen has completed the
10 installation of the CEMS for Process Heaters
11 H-201 and H-401 and is waiting for certification
12 by IDEM. Safety-Kleen requested this update to
13 the state rule to address the monitoring needs
14 and be in compliance with the Agreed Order.

15 Safety-Kleen provided IDEM with five years
16 of historical data for process heater H-406,
17 which shows the process heater is well below the
18 current emission limit. Safety-Kleen will
19 maintain the current method of emissions
20 monitoring for process heater H-406. IDEM is not
21 proposing to remove compliance demonstration
22 requirements for either units -- for other units
23 at this source. Once completed, this rulemaking

1 will be submitted to U.S. EPA as a State
2 Implementation Plan revision for their approval.

3 IDEM requests that the Board preliminarily
4 adopt this rule as presented. Program staff
5 experts and I are available to answer any further
6 questions that you may have.

7 Thank you.

8 CHAIRMAN GARD: Are there any
9 questions?

10 (No response.)

11 CHAIRMAN GARD: Okay. Thank you.

12 MS. HACKNEY: Okay.

13 CHAIRMAN GARD: The hearing is
14 concluded -- well, are there any speaker cards?

15 MS. KINDRICK: No, ma'am.

16 CHAIRMAN GARD: Okay.

17 Anybody else want to speak to the issue?

18 (No response.)

19 CHAIRMAN GARD: Okay. Now the
20 hearing is concluded. The Board will now
21 consider preliminary adoption of amendments to
22 rules at 326 IAC 7-4.1-6, Ignitable Hazardous
23 Waste [sic].

1 Is there any Board discussion?

2 (No response.)

3 CHAIRMAN GARD: I need a motion to
4 preliminarily adopt the rules.

5 MR. ETZLER: So moved.

6 CHAIRMAN GARD: Is there a second?

7 MR. DAVIDSON: Second.

8 CHAIRMAN GARD: This will be a roll
9 call.

10 Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Bortner?

13 MR. BORTNER: Yes.

14 CHAIRMAN GARD: Mr. Davidson?

15 MR. DAVIDSON: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Mr. Green?

19 MR. GREEN: Yes.

20 CHAIRMAN GARD: Mr. Horn?

21 MR. HORN: Yes.

22 CHAIRMAN GARD: Mr. Ketzenberger?

23 MR. KETZENBERGER: Yes.

1 CHAIRMAN GARD: Ms. Kozyrski?

2 MS. KOZYRSKI: Yes.

3 CHAIRMAN GARD: Ms. Nelson?

4 MS. NELSON: Yes.

5 CHAIRMAN GARD: Dr. Niemiec?

6 DR. NIEMIEC: Yes.

7 CHAIRMAN GARD: Mr. Rulon?

8 MR. RULON: Yes.

9 CHAIRMAN GARD: Ms. Totten?

10 MS. TOTTEN: Yes.

11 CHAIRMAN GARD: And the Chair votes
12 aye. That's thirteen ayes, zero nays. The rules
13 have been preliminarily adopted.

14 DR. ALEXANDROVICH: Madam Chair?

15 CHAIRMAN GARD: Yes.

16 DR. ALEXANDROVICH: I think when you
17 were calling for our vote, you might have cited
18 the Ignitable Hazardous Waste numbers, and I
19 don't know if we need to use the proper --

20 CHAIRMAN GARD: What now? Where --

21 DR. ALEXANDROVICH: Well, you said,
22 "Ignitable Hazardous Waste," and I didn't follow
23 if you said, "7-4.1-6," or --

1 MS. PEDERSEN: Yeah, there was a --
2 there's a mistake in the script on the rule.

3 CHAIRMAN GARD: There was?

4 MS. PEDERSEN: The citation was
5 correct, and --

6 CHAIRMAN GARD: Okay.

7 MS. PEDERSEN: -- Krystal clarified
8 the topic when she first came up here, so --

9 DR. ALEXANDROVICH: Okay. I just
10 didn't know, on the vote, if that mattered.

11 MS. PEDERSEN: Yeah. No, the
12 citation was correct.

13 DR. ALEXANDROVICH: Okay. Thank you.

14 MS. PEDERSEN: Thank you.

15 CHAIRMAN GARD: You're good.

16 MR. RULON: Do you always read
17 everything?

18 (Laughter.)

19 CHAIRMAN GARD: This is a public
20 hearing before the Environmental Rules Board of
21 the State of Indiana concerning preliminary
22 adoption of 329 IAC 3.1-5 and 329 IAC 3.1-6,
23 Definition of Solid Waste.

1 I will now introduce Exhibit D, the draft
2 rule, into the record of the hearing.

3 Dan Watts will present the rule.

4 MR. WATTS: Hello again, and good
5 afternoon, Chairwoman Gard, members of the Board.
6 I am presenting LSA Document No. 20-23 for
7 preliminary adoption.

8 This rulemaking amends the Hazardous Waste
9 Rules in 329 IAC 3.1 with the incorporation by
10 reference of recent updates to the federal
11 identification of solid waste for the purposes of
12 hazardous waste management. The rulemaking is in
13 response to a federal court vacatur of limited
14 requirements in a 2015 federal rule for the
15 definition of solid waste, which IDEM has
16 previously adopted.

17 The federal court vacatur reinstated the
18 transfer-based exclusion at 40 CFR 261.4(a)(24)
19 and the original definition of legitimate
20 recycling at 40 CFR 260.43. Other changes in the
21 incorporated federal requirements include
22 corrections to cross-references and other
23 conforming changes that resulted from the court

1 vacatur.

2 With this rulemaking, IDEM's hazardous
3 waste rules will be consistent with the federal
4 definition of solid waste and also comply with
5 the state statutory changes in Public
6 Law 120-2022 pertaining to these particular
7 federal requirements.

8 For this rulemaking, IDEM had originally
9 proposed state-specific requirements that added a
10 review and approval process for intermediate and
11 reclamation facilities that managed secondary
12 hazardous materials under the transfer-based
13 exclusion. However, due to the enactment of
14 Public Law 120-2022 and comments received during
15 the second comment period, IDEM decided to remove
16 the additional state-specific requirements and
17 strictly incorporate by reference the federal
18 requirements included in response to the court
19 vacatur.

20 The rulemaking also is amending the same
21 IAC section included in the LSA Document 22-216,
22 which was presented for final adoption earlier at
23 this meeting. IDEM will update the proposed rule

1 language to conform with the expected changes to
2 329 IAC 3.1-6-1 for final adoption of this
3 rulemaking. Sorry if that was confusing at all.

4 Representatives from IDEM are available to
5 answer any questions -- any questions you may
6 have for this rulemaking, and the Department
7 requests that the Board preliminarily adopt this
8 rule so Indiana's identification of solid waste
9 for the purposes of hazardous waste management
10 can be consistent with the federal requirements.

11 Thank you.

12 CHAIRMAN GARD: Are there any
13 questions from the Board?

14 MR. DAVIDSON: Chairman, was -- did
15 that -- 120-2022, is that the bill last session
16 we had so much fun with?

17 COMM. ROCKENSUESS: (Nodded yes.)

18 MR. WATTS: Yeah, that's House
19 Bill 1226, so I just used the --

20 MR. DAVIDSON: There was a lot of
21 back and forth with IMA there. Are they here,
22 are they going to speak, or did that all get
23 pretty much cross-resolved? Do you guys feel

1 good about all of it?

2 COMM. ROCKENSUESS: The comments that
3 IMA made were based on the previous version, and
4 based on that and the law, we decided to just
5 adopt the federal regs.

6 MR. WATTS: Yeah.

7 COMM. ROCKENSUESS: And that's what
8 they wanted to be done.

9 MR. DAVIDSON: Okay.

10 CHAIRMAN GARD: Were there any
11 speaker cards?

12 MS. KINDRICK: No, ma'am.

13 CHAIRMAN GARD: Does anybody want to
14 address the issue?

15 (No response.)

16 CHAIRMAN GARD: Thank you. The
17 hearing is concluded. The Board will now
18 consider preliminary adoption of 329 IAC 3.1-5
19 and 329 IAC 3.1-6, Definition of Solid Waste.

20 Is there any Board discussion?

21 MR. RULON: Madam Chair, I just had a
22 question for Brian real quickly.

23 So, the federal standards kind of go up

1 and down, and so, in this particular case,
2 they're not really tightening, they're just
3 redefining, as I understood it. In the future,
4 if they would tighten, we would still be asked to
5 incorporate that change as a rulemaking, or will
6 that now become automatic, from what you told us
7 earlier?

8 COMM. ROCKENSUESS: No, that -- you
9 would still be asked to do a rulemaking.

10 MR. RULON: Okay.

11 COMM. ROCKENSUESS: The thing that
12 we're looking at removing are the -- like the
13 ones we did first.

14 MR. RULON: Yeah, the emergencies.

15 COMM. ROCKENSUESS: The emergency,
16 based on attainment designations.

17 MR. RULON: Okay.

18 COMM. ROCKENSUESS: Everything else
19 would stay the same.

20 CHAIRMAN GARD: Any other questions?

21 (No response.)

22 CHAIRMAN GARD: Okay. I now need a
23 motion to preliminarily adopt the rules.

1 MR. ETZLER: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. GREEN: Second.

4 CHAIRMAN GARD: Roll call.

5 Dr. Alexandrovich?

6 DR. ALEXANDROVICH: Yes.

7 CHAIRMAN GARD: Mr. Bortner?

8 MR. BORTNER: Yes.

9 CHAIRMAN GARD: Mr. Davidson?

10 MR. DAVIDSON: Yes.

11 CHAIRMAN GARD: Mr. Etzler?

12 MR. ETZLER: Yes.

13 CHAIRMAN GARD: Mr. Green?

14 MR. GREEN: Yes.

15 CHAIRMAN GARD: Mr. Horn?

16 MR. HORN: Yes.

17 CHAIRMAN GARD: Mr. Ketzenberger?

18 MR. KETZENBERGER: Yes.

19 CHAIRMAN GARD: Ms. Kozyrski?

20 MS. KOZYRSKI: Yes.

21 CHAIRMAN GARD: Ms. Nelson?

22 MS. NELSON: Yes.

23 CHAIRMAN GARD: Dr. Niemiec?

1 DR. NIEMIEC: Yes.

2 CHAIRMAN GARD: Mr. Rulon?

3 MR. RULON: Yes.

4 CHAIRMAN GARD: Ms. Totten?

5 MS. TOTTEN: Yes.

6 CHAIRMAN GARD: The Chair votes aye.

7 It's thirteen ayes, zero nays. The rules have
8 been preliminarily adopted.

9 This is a public hearing before the
10 Environmental Rules Board of the State of Indiana
11 concerning preliminary adoption of amendments to
12 rules at 329 IAC 9, Underground Storage Tank
13 Revisions.

14 I will now introduce Exhibit E, the draft
15 rule, into the record of the hearing.

16 Seth Engdahl will present the rule.

17 MR. ENGDAHL: Members of the Board,
18 good afternoon again. My name is Seth Engdahl.
19 I am a Rule Writer within the Rules Development
20 Section of IDEM's Office of Legal Counsel.

21 The rulemaking currently under
22 consideration would make several changes to rules
23 found at 329 IAC 9. The overarching goal of this

1 rulemaking is to better align the rules in
2 Indiana governing underground storage tanks, or
3 UST's, with the Code of Federal Regulations.
4 Accordingly, the bulk of this rulemaking repeals
5 sections of 329 IAC 9 that are either more
6 proscriptive or identical to their federal
7 counterparts and then incorporates the relevant
8 sections of the Code of Federal Regulations.

9 I would emphasize that this is not a
10 complete repeal and incorporation by reference
11 for rules governing UST's. Rules such as those
12 governing UST closure at 329 IAC 9-6 are staying
13 in place because their federal counterparts are
14 generally vague and allow states to develop
15 state-specific rules and programs.

16 This rulemaking primarily impacts
17 state-specific rules governing initial response,
18 site investigation, corrective action, reporting,
19 record keeping, and financial responsibility.
20 Repealing these sections and incorporating their
21 federal counterparts will provide the agency and
22 UST owners and operators needed flexibility in
23 responding to leaks, spills, and overfills of

1 UST's.

2 I would also note that this rulemaking
3 incorporates the contents of certain notification
4 forms in 329 IAC 9-2-2. The incorporation of
5 these forms is deemed essential by the Office of
6 Management and Budget to provide predictability
7 to UST owners and operators.

8 IDEM requests that the Board approve this
9 rule as presented, and I am happy to answer any
10 questions they may have.

11 CHAIRMAN GARD: Are there any
12 questions for Seth?

13 MS. KOZYRSKI: Yeah, I do have a
14 question.

15 The forms you just spoke of in this
16 block --

17 MR. ENGDAHL: Uh-huh.

18 MS. KOZYRSKI: -- are those a new set
19 of forms? My experience has been the agency had
20 migrated to updated forms in the last two to
21 three years.

22 MR. ENGDAHL: No, they're forms that
23 were currently in use --

1 MS. KOZYRSKI: Okay.

2 MR. ENGDAHL: -- and it's just the
3 contents -- sort of a summary of the contents.
4 So, if somebody were to look at the rule, they
5 would know what kind of information would be
6 expected of them. So, they're not new forms
7 or --

8 MS. KOZYRSKI: They're not new forms?

9 MR. ENGDAHL: -- and not new content,
10 no.

11 MS. KOZYRSKI: Okay. Thank you.

12 CHAIRMAN GARD: Any other questions?

13 (No response.)

14 CHAIRMAN GARD: Are there any speaker
15 cards?

16 MS. KINDRICK: No, ma'am.

17 CHAIRMAN GARD: Okay.

18 Anybody want to speak to the issue that's
19 out there?

20 (No response.)

21 CHAIRMAN GARD: Okay. This hearing
22 is concluded. The Board will now consider
23 preliminary adoption of amendments to rules at

1 329 IAC 9, Underground Storage Tank Revisions.

2 Is there any further Board discussion?

3 (No response.)

4 CHAIRMAN GARD: Is there a motion to
5 preliminarily adopt the rules?

6 MR. DAVIDSON: So moved.

7 MR. HORN: So moved.

8 CHAIRMAN GARD: Is there a second?

9 MR. GREEN: Second.

10 CHAIRMAN GARD: This is a roll call.

11 Dr. Alexandrovich?

12 DR. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Mr. Bortner?

14 MR. BORTNER: Yes.

15 CHAIRMAN GARD: Mr. Davidson?

16 MR. DAVIDSON: Yes.

17 CHAIRMAN GARD: Mr. Etzler?

18 MR. ETZLER: Yes.

19 CHAIRMAN GARD: Mr. Green?

20 MR. GREEN: Yes.

21 CHAIRMAN GARD: Mr. Horn?

22 MR. HORN: Yes.

23 CHAIRMAN GARD: Mr. Ketzenberger?

1 MR. KETZENBERGER: Yes.

2 CHAIRMAN GARD: Ms. Kozyrski?

3 MS. KOZYRSKI: Yes.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Yes.

6 CHAIRMAN GARD: Dr. Niemiec?

7 DR. NIEMIEC: Yes.

8 CHAIRMAN GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 CHAIRMAN GARD: Ms. Totten?

11 MS. TOTTEN: Yes.

12 CHAIRMAN GARD: And the Chair votes
13 aye. Thirteen ayes, zero nays. The rule is now
14 preliminarily adopted.

15 Now we will have presentation on a Nonrule
16 Policy Document by Lynette Schrowe of IDEM's
17 Office of Land Quality regarding soil management.

18 MS. SCHROWE: Good afternoon. My
19 name is Lynette Schrowe. I'm with the Office of
20 Land Quality, Remediation Services Branch, and
21 today for your consideration we're putting
22 forward our Soil Management Plan.

23 We developed this document for three

1 primary reasons: Number one, we wanted to create
2 one comprehensive document for our users; the
3 second reason, we wanted our users to be aware of
4 all of the regulatory and policy and permitting
5 requirements associated with managing
6 contaminated soil; and finally and most
7 importantly, we wanted to minimize human exposure
8 to contaminated soil.

9 We anticipate two scenarios under which a
10 Soil Management Plan would be needed. Number
11 one, in cases where sites are closing out with an
12 environmental restrictive covenant, which is a
13 type of conditional closure for our office. We
14 want the responsible party to develop this custom
15 document so that future property owners have easy
16 access and know what to do in case these types of
17 construction activities come up later.

18 The second scenario is for future
19 construction projects, so any time contaminated
20 soil is going to be transported or disposed of
21 on-site, property owners will have access to one
22 document that details how to go about managing
23 this soil properly.

1 The Soil Management Plan also contains a
2 report template. That way all of our Soil
3 Management Plans going forward will be
4 consistent. And speaking of the template, other
5 slide?

6 MS. GREEN: Kevin's managing the
7 slides.

8 MS. SCHROWE: Oh, Kevin's doing
9 slides.

10 So speaking of the template, so we can
11 develop one comprehensive template to be used
12 across all of our Soil Management Plans, and they
13 require the user to consider the following
14 headings: Soil Handling and Disposal
15 Requirements. How are you managing your soil?
16 Stockpiles, what are you doing about
17 transportation on-site? And how are you handling
18 your off-site disposal?

19 Contamination Containment. This is
20 related to our Office of Air Quality. How are
21 you handling your fugitive dust? Are you keeping
22 it on-site? Are you doing proper air monitoring?

23 Field Screening. What instruments are you

1 using to guide your excavation? Is it
2 calibrated? Are you sure?

3 IDEM's Legitimate Use Policy. I'm sorry.
4 IDEM's Legitimate Use Policy. This is one of the
5 policies I spoke of. We want to be sure that our
6 users are aware of it. Any time contaminated
7 soil is being removed on-site, you may need
8 approval from the agency, and this is how you go
9 about getting it.

10 Final Restoration. Again, making sure
11 that our users are aware of policy. One of the
12 main ones is Supplemental Guidance on Engineered
13 Exposure Controls," so being sure that our users
14 are using all of our information effectively.

15 Contingency Plan. What about unforeseen
16 circumstances? What about the "what-if"
17 situations? Are you planning for that? Is that
18 being considered?

19 Your record-keeping practices. Any time
20 soil is being brought on-site, where is it coming
21 from? Where are you putting it? What levels are
22 associated with that material?

23 Maps and Tables. Being sure all of this

1 information is depicted and compared to our R-2
2 standards.

3 And finally, all of these other
4 miscellaneous requirements all put into one
5 place, such as groundwater management. If you're
6 digging a big pit and it fills with rainwater, if
7 it's getting filled with groundwater, what do you
8 do with it? Your worker safety, and finally,
9 storm water and erosion control.

10 So, all of these considerations are put in
11 under these headers so that when the user's going
12 through and developing this document, it's
13 comprehensive, it's complete, and most
14 importantly, it's consistent.

15 As far as our comment period, so we put
16 this out for comment. We got a total of 70 from
17 eight different contributors. Those contributors
18 included one professional organization, four
19 different IDEM offices or branches, an outside
20 attorney, one outside consultant, and one
21 industry representative.

22 Of those 70 comments, 16 were noted, and
23 no changes were made to the language; 49 required

1 minor changes or rewording for clarification;
2 five comments would be considered subjectively
3 substantial. The most important one, in my
4 estimation, was the contamination containment
5 reference to the fugitive dust control from our
6 Office of Air Quality. That language was
7 completely removed and replaced with language
8 supplied by the Office of Air Quality.

9 The second comment that was most
10 significant, our Compliance Branch made sure that
11 our reference to the Uncontaminated Soil Policy
12 was clear and consistent with their requirements.
13 That language was removed in its entirety and
14 replaced.

15 We added some consistency to make sure
16 that the R-2 is reflected in the Soil Management
17 Plan, so that required us going through and
18 making sure that all of the language matched.

19 And we also added two definitions,
20 "Authorized Agent," this was suggested by an
21 industry representative, and also, "Free
22 Product," so that was suggested by one of our
23 professional organizations.

1 And that summarizes the Soil Management
2 Plan, so with those modifications, based on our
3 public comment period, we believe it's ready for
4 your approval.

5 CHAIRMAN GARD: Are there any
6 questions from the Board?

7 DR. ALEXANDROVICH: I have one
8 question. Would this and the other NPD's we're
9 going to hear today -- so, you mentioned that you
10 got comments from departments within IDEM.

11 MS. SCHROWE: Correct.

12 DR. ALEXANDROVICH: So, that -- you
13 submitted it to all of the divisions, like CTAP
14 and stuff, that --

15 MS. SCHROWE: We put it out for
16 public comments, and those were the responses
17 that we received. They weren't directed to any
18 one specific group.

19 DR. ALEXANDROVICH: Okay. So, in
20 other words, if somebody from the Office of Air
21 wanted to comment, they did it the same way --

22 MS. SCHROWE: Correct.

23 DR. ALEXANDROVICH: -- like the

1 public would do it?

2 MS. SCHROWE: Correct.

3 DR. ALEXANDROVICH: Okay. Perhaps
4 you guys might think about sending this stuff out
5 to the different divisions to look at internally
6 ahead of time, rather than having them kind of
7 after the process.

8 COMM. ROCKENSUESS: So, I think part
9 of the reason we did that is so that the changes
10 we were making were visible and clear to the
11 public why we're making them. We do talk about
12 these. We have senior staff meetings every two
13 weeks. These were part of those discussions.
14 So, our offices understood that this was coming.
15 We wanted -- we didn't want to change the
16 document that we put out without an explanation
17 of why we put it -- why we changed it.

18 DR. ALEXANDROVICH: Right. I guess
19 what I would say is that you send it to those
20 divisions, you know --

21 COMM. ROCKENSUESS: Prior to putting
22 it out?

23 DR. ALEXANDROVICH: -- agency --

1 yeah, yeah.

2 COMM. ROCKENSUESS: Yes. Good point.

3 DR. ALEXANDROVICH: Because I know
4 CTAP is really useful to all of the sources
5 around the state, and they might have some wisdom
6 for improvements.

7 COMM. ROCKENSUESS: Sure.

8 CHAIRMAN GARD: Any other questions?

9 (No response.)

10 CHAIRMAN GARD: Thank you.

11 We will now have a presentation on a
12 series of Nonrule Policy Documents from Peggy
13 Dorsey of IDEM's Office of Land Quality on the
14 following program guidance: State Cleanup
15 Program Guide -- I'm not going to mention those
16 numbers again -- Voluntary Remediation Guide,
17 Petroleum Remediation Program Guide, R -- RCRA
18 Closure and Corrective Action Guide,
19 Institutional Controls Program.

20 Peggy?

21 MS. DORSEY: Good afternoon,
22 Chairwoman Gard and members of the Board. The
23 Office of Land has been very busy with NPD's this

1 year, so hopefully these are the last ones you'll
2 see for a while, but they were necessary. So, I
3 wanted to go over five. In the interest of time,
4 we'll try to just consolidate them into just one
5 presentation.

6 They are very similar, they all kind of
7 reference the same sorts of things, so they are
8 individually in your packet, but again, today's
9 presentation will be cumulative and
10 comprehensive. So, you've got those within your
11 packet. If anybody wants to see the presentation
12 and have a copy of that, I'm not sure if we have
13 it, but we do have other copies here for you to
14 follow along.

15 So, again, my name is Peggy Dorsey. I am
16 the Assistant Commissioner for the Office of Land
17 Quality. And what we did -- next slide -- what
18 we did was needed to go through, looking at the
19 various cleanup programs that we have, and trying
20 to make sure that we were clear and consistent
21 with what we are asking the outside to do and how
22 to negotiate their way through those programs.

23 So, the multiple programs that we have in

1 Land, we wanted to make sure, again, we have
2 provided the guidance and the assistance. We are
3 looking at programs that address hazardous and
4 petroleum constituents in waste and how to clean
5 those up.

6 So, that's what we do. How we do it is
7 sometimes complicated, and we wanted to add
8 clarity to that. So, how we do it, based in --
9 on a Nonrule Policy Document that we had
10 presented to the Board in early 2022, this year,
11 Mike Habeck, who is here today, presented that,
12 and that is called the Risk-Based Closure Guide.

13 That is the technical guidance document
14 that both the internal staff as well as external
15 entities follow on how do we actually do this
16 with the technical requirements. Sometimes
17 that's not clear, and so, the guidance has proven
18 over time to add that clarity and really provide
19 better consistency and management of those
20 cleanups and those programs. So, that's the --
21 that's the how, that's the technical part.

22 Next slide.

23 So, the purpose of what I'm doing today

1 and with the Nonrule Policy Documents are because
2 there are different federal and state authorities
3 that govern all of the cleanup programs, and that
4 makes it somewhat confusing for the people on the
5 outside, and sometimes the people on the inside,
6 to follow along. Let's say, for instance,
7 somebody has an underground storage tank site
8 that they have to clean up versus a hazard waste
9 site. Those are two different programs, and
10 managed very differently.

11 So, what we wanted to do was provide the
12 transparent and the understand -- transparency
13 and understanding of the requirements, the
14 expectations, and the guidance necessary to be
15 able to do that. So, each program guide today
16 that we're going to look at, NPD, is a companion
17 guide to the technical guidance document that you
18 saw earlier this year.

19 So, next slide.

20 A little bit of the evolution on how we
21 got here. In 1996 the Voluntary Remediation
22 Guide was there for the Voluntary Remediation
23 Program. That's a CERCLA program. That's a

1 federal regulation. Also in existence in 1997
2 was the RCRA Closure and Corrective Action Guide.
3 That was an NPD. The state cleanup program had
4 nothing, and our tanks program had nothing, so
5 inconsistencies right there.

6 In 2001, we wrote the Risk Integrated
7 System of Closure. That was our first technical
8 guidance document that we really tried to tackle
9 all of the programs and "How do you do this?"
10 And it was put out in two volumes. One was the
11 technical and one was "How do you negotiate your
12 way through the programs?"

13 We found that cumbersome, and so did the
14 outside. You can see it split in 2012. There
15 was the Remediation Closure Guide created, again,
16 technical, and then also the Remediation Program
17 Guide, which was "How do you do this in the
18 programs."

19 So, what we've done is we've updated,
20 you'll see, in 2022, the technical. It's now
21 called the Risk Based Closure Guide, again, the
22 one you've already seen. And now today, in that
23 yellow box, we're presenting the five different

1 NPD's that used to all be sort of incorporated
2 into one big guide, which is the blue box.

3 So, that's where we are today. We're
4 looking at the five in the yellow box. So, five
5 Program Guides: State Cleanup, Voluntary
6 Remediation, Petroleum Remediation, RCRA Closure
7 and Corrective Action, and then also the
8 Institutional Controls Program.

9 Next slide.

10 So, basically what each one of these NPD's
11 has as far as content, and again, you'll see as
12 we go through these real quick, none really
13 appropriate for a technical guidance.

14 Rules and laws. Process. How does a site
15 get into that program? What is it designed to
16 address? Public involvement and notification.
17 Investigations and documentation requirements.
18 Remedy decisions and actions. How to close.
19 What do you do if there's an issue that arises?
20 How do you figure that out with the program? How
21 do you do cost recovery? What do you have to pay
22 for? Which programs do that? Which programs
23 don't?

1 And then document and electronic data
2 submittal guidelines. As we've gone through an
3 evolution of all of our programs, it became
4 pretty obvious that we needed to get electronic
5 submittals and not hard copies, and there was no
6 way really to find out how do you do that, what
7 are the standards by which you submit a document,
8 how big can it be, that kind of thing.

9 Next slide.

10 So, the program-specific NPD's. Why did
11 we even change? Earlier in the slide you saw the
12 blue box, and it was just one big glob of program
13 information. Well, it was difficult for folks to
14 follow, so we definitely wanted to separate that
15 out and make it very clear and, again,
16 transparent as to what do you do in each program.
17 And also, and I think more importantly, it
18 provided flexibility and agility. If one program
19 changes, you didn't have to go back and change
20 the entire NPD. Again, another reason for
21 separating out technical and program guides.

22 So, we just became more nimble if you're
23 targeting only the program that needed to change

1 and not all of them. And some programs, they
2 change their processes more frequently than
3 others, and you can see we'd be up here fairly
4 consistently redoing NPD's.

5 It also, and it's not on that slide, but
6 it forced us to look at each of the programs and
7 actually look at where are we consistent, where
8 are we not consistent, and fix those issues, and
9 then ask our own questions about should we be
10 doing it this way or this way? Which one works
11 better?

12 And then again for the outside, create
13 that more easily understood process. Again, if
14 you're a consultant and you're bringing a site
15 through, sometimes the tanks program, other times
16 State Cleanup, other times VRP, you don't have to
17 keep learning different ways of doing it. We
18 felt we should be consistent.

19 Next slide.

20 So, additional changes from the original
21 program guide. There was no office-wide guidance
22 on -- that dealt with institutional controls.
23 It's not a remedial program, but institutional

1 controls are an administrative way of closing out
2 a site, so we felt it was important to put it
3 within the guidance document. So, that was an
4 addition.

5 We also did not have forms included in the
6 guides. We wanted to pull those forms out
7 because, again, as those forms change, you don't
8 want to have to change on entire NPD, again,
9 being more nimble. Up-to-date forms are included
10 on our Web sites, so we felt that that was a
11 better place to put them.

12 The last one here talks about terminology.
13 We found that we were inconsistent on how we
14 referred to certain things within the technical
15 guide and within the program guides, so we wanted
16 to look at all of that, make sure that we were
17 using common terms. Again, if you're on the
18 outside or inside, if you're not using the same
19 terms, it's difficult to know you're doing things
20 right.

21 Next slide.

22 The following programs, just as a note,
23 did have chapters within the original program

1 guide, but they do not have NPD's today, and we
2 wanted to explain that. The Indiana Brownfields
3 program is administered by the Indiana Finance
4 Authority, so they provide guidance on their own
5 Web site.

6 We do have federal programs, which many of
7 you will recognize Superfund in that list. Site
8 investigation, Superfund, and defense
9 environmental restoration program, they follow
10 their own federal processes and laws, so we
11 didn't have any reason to write a program guide
12 that dealt with something that we couldn't
13 change. When the Feds change, the Feds change.
14 We follow that.

15 And then the last one is the Excess
16 Liability Trust Fund, which is the fund that our
17 tanks program uses. They're going to develop
18 their own guidance separately.

19 Next slide.

20 So, with these, I'm not going to go
21 through all of these. We could be here for quite
22 a bit of time, and they're all kind of basically
23 the same. Most of each slide after this goes

1 program by program.

2 But essentially some of the key things
3 that we put in writing and in the guidance
4 document that we didn't have before, so that it
5 would be clarified, community involvement, how do
6 you gain access to third-party properties, how
7 to -- the fact that you would have to, if you're
8 a consultant, provide an annual progress report,
9 how to do a technical review panel if you
10 disagree with us, what's that process, cost
11 recovery.

12 One I guess I should mention. I know
13 you're not familiar with these programs, but the
14 Independent Closure Process we used to do within
15 State Cleanup, and that's a way such that people
16 can sort of guide their own cleanups if they're
17 petroleum based, that tend to be some of the
18 easier cleanups that we do.

19 We try to minimize our involvement, let
20 the outside do the cleanup to a certain point on
21 their own, at their own pace, and then just kind
22 of report back. We felt that that was more
23 appropriate to put in the tanks program than it

1 was for the State Cleanup program. So, there are
2 some changes there.

3 Next slide.

4 VRP, three major ones. We changed the
5 contract, which is that VRA, Voluntary
6 Remediation Agreement. It just says you have to
7 do X work within two years for us. After that
8 contract is executed, again, provided a progress
9 report, the fact that if you withdraw from the
10 program, that you're going to be referred to
11 another program, you can't just walk away and
12 forget you ever had contamination.

13 And then there's a couple of bullet points
14 there that are pretty minor, telling the
15 consultants they are responsible to go to the
16 library and their document for public review,
17 that type of thing.

18 Next slide.

19 Petroleum Remediation Guide. 320 IAC --
20 329 IAC 9.4 was repealed. Release reporting now
21 follows CFR 40 Part 280.5. Release
22 classifications are now high, medium and low
23 priority, and definitions were given for that.

1 It talks again about the Independent
2 Closure Process, how to report things to the
3 Spill Line, how to use the guidance for the
4 Independent Closure process, and new forms were
5 added.

6 Next slide.

7 And then the last one is -- well, not the
8 last one, almost the last one -- our RCRA Closure
9 and Corrective Action Program. There were no
10 major revisions. Again, that follows the federal
11 process pretty closely, so there were some things
12 we felt we needed to explain more clearly, but we
13 really didn't change what was already out there.

14 The last one is Institutional Controls.
15 Again, it's a program. It's not a cleanup
16 program in and of itself, but it is a component
17 of our closures, and the cleanup programs do use
18 the Institutional Controls as part of that
19 closure. They've never had a program guide
20 before, so this is new for them.

21 And this is based on House Enrolled
22 Act 1162 that passed in 2009 that required us to
23 consider risk when we closed sites out. Instead

1 of cleaning everything up and every molecule, we
2 had to look at the risk that was there based on
3 the contamination and the threat to human health
4 and the environment.

5 So, they have three mechanisms.
6 Environmental Restrictive Covenants are in IC,
7 Environmental Restrictive Ordinances, and
8 Long-Term Stewardship, and it simply talks more
9 about those and what those mean and how to get
10 those as part of your closure. And again, those
11 are all administrative controls.

12 Next slide.

13 So, we did have public comment on all of
14 these. We received a total of 120 from only four
15 distributors, one of which was our own internal
16 staff, which we probably had the most comments
17 from them, but we had one from a consultant, one
18 from an attorney, and one from a manufacturers
19 association, and we didn't really see any
20 substantial comments.

21 Next slide.

22 So, based on those comments, we did make
23 changes, but they weren't substantial at all.

1 They were changes in maybe some terminology, some
2 spelling, some, you know, minor things like that.
3 So, we incorporated many of them. So, the minor
4 revisions in fact helped each NPD be a better
5 document, but again, didn't really change
6 anything.

7 So, I know I went through that very fast.
8 I know you're not very familiar with our cleanup
9 programs, so I do have staff here today from each
10 of the programs. They're the authors of the
11 NPD's, and some of their supervisors, so if you
12 have any questions, I'd be happy to try to answer
13 those, or they can help out should you have
14 detailed questions.

15 CHAIRMAN GARD: Thank you, Peggy. I
16 think this is something that was really needed to
17 be done.

18 MS. DORSEY: I agree. I agree. It
19 was -- you know, listening to internal staff, and
20 having been a consultant a couple of times myself
21 and trying to negotiate your way through IDEM
22 sometimes is very different. So, the more we can
23 add clarity and explain those things, and our

1 programs do evolve, you know, for various
2 reasons, I think it's important, you know, from
3 all sides of the equation to get these things
4 more transparent and explain more, be as clear as
5 we can.

6 CHAIRMAN GARD: Well, thank you very
7 much.

8 Questions?

9 MS. KOZYRSKI: Can you -- can someone
10 comment about the long-term stewardship --

11 MS. DORSEY: Uh-huh.

12 MS. KOZYRSKI: -- aspect in the
13 institutional controls, how that differs from
14 ERC, or are they related?

15 MS. DORSEY: So -- and Lynette is
16 here. Lynette is our institutional controls
17 person, but essentially, and environmental
18 restrictive covenant says -- it runs with a deed,
19 so it's placed on the deed of closure, and it
20 says, "You cannot do these things. You have to
21 restrict the property use in these ways, because
22 you left contamination in place."

23 So, for example, it might say, "You can

1 build your building, but you cannot drill a
2 drinking water well on this property." So, that
3 would be a restriction, no drinking water wells.

4 MS. KOZYRSKI: Sure.

5 MS. DORSEY: Or "You can't have a
6 residence on that property. It can be used for
7 commercial, but you can't build a home." So, we
8 actually list those things out.

9 Long-term stewardship is you have
10 contamination left in place and there are still
11 things that you may have to do on that site,
12 sometimes mechanical or engineering-wise. Let's
13 say you have groundwater contamination. You want
14 closure, but you're not actually going to get the
15 site cleaned up or addressed for a hundred years.
16 You've got to maintain the pumps, you've got to
17 change out filters, you've got to monitor, so all
18 of these things are considered long-term
19 stewardship.

20 You're the steward of the land, you're the
21 steward of the contamination, and it outlines,
22 and you have to agree to, "Here are all of the
23 things I'm going to do to manage that and make

1 sure that there's no risk to human health and the
2 environment," such that you can use that land and
3 people aren't threatened by it.

4 But you have to agree to it. Not many
5 people do that. It's expensive, it's something
6 that -- they don't want to have that long-term
7 legacy for -- you know, if somebody tells you you
8 have to do that for a hundred years, well, you're
9 not going to live that long, and they have to
10 will that, in essence, to perhaps their family
11 members, or they have to account for that
12 corporately somehow. So, not many people take
13 advantage of long-term stewardship, but it is
14 there.

15 MS. KOZYRSKI: I did have one other
16 question, and that was: Is the agency going to
17 hold any type of forum for people to become
18 familiar with these, or -- I mean you prepared a
19 nice set of slides, or is it just the stand-alone
20 documents that are --

21 MS. DORSEY: We will be doing
22 presentations. We'll have it obviously posted on
23 our Web site. We tend to do banners for members

1 of the MSECA group, which is many of the
2 consultants and environmental attorneys. Through
3 our public comment period a lot of them know it's
4 out there. And so, we do have a planned rollout.

5 We realize the document -- you know, it's
6 only going to be successful if people know it's
7 there and then have the opportunity to ask
8 questions about, "What does that really mean?
9 What am I really supposed to do?" We hope it's
10 clear, but if not, so, yes, most definitely.

11 MS. KOZYRSKI: Thank you.

12 MS. DORSEY: Uh-huh.

13 DR. ALEXANDROVICH: Yeah, it was a
14 good presentation and it helped me understand
15 things --

16 MS. DORSEY: Thank you.

17 DR. ALEXANDROVICH: -- a lot better.

18 So, if I understood what you're saying,
19 this part of the document is the navigation part,
20 and this part is the technical part.

21 MS. DORSEY: Yes, ma'am -- well, no,
22 no, no, no. And for the guide itself, for the
23 NPD, yes, that NPD in your packet, it actually is

1 sort of -- there's an explanation and then the
2 actual NPD.

3 DR. ALEXANDROVICH: Okay.

4 MS. DORSEY: The technical --

5 DR. ALEXANDROVICH: So, this is a
6 guide. So, this is not part of the NPD?

7 COMM. ROCKENSUESS: So, they go
8 together.

9 MS. DORSEY: Yeah.

10 DR. ALEXANDROVICH: Okay. Because I
11 was a little confused on how they went together,
12 because it wasn't -- they weren't necessarily
13 clearly referenced in this part, and then --
14 which also gets to another technical thing. I
15 know you scanned this -- these parts, because of
16 the signature page, but I tried to word search so
17 I could find reference to this, because I wasn't
18 sure how to use them, so --

19 MS. DORSEY: So, that's two things go
20 together. Each --

21 DR. ALEXANDROVICH: Right.

22 MS. DORSEY: -- program has those two
23 documents with it, and those are in your packet.

1 The technical part that we're talking about is
2 not in your packet. You guys had that
3 presentation in --

4 DR. ALEXANDROVICH: Okay.

5 MS. DORSEY: -- July, something like
6 that, by Mike Habeck.

7 DR. ALEXANDROVICH: So, this doesn't
8 have an NPD number?

9 MS. GREEN: If I can interject, too,
10 if you go into the policy section of the actual
11 NPD document, the one in your left hand, it
12 has -- in the policy section, it refers to the
13 attachment. The -- basically, the formatted NPD
14 is not such that it lends itself to a lengthy
15 document.

16 DR. ALEXANDROVICH: Okay.

17 MS. GREEN: So, the policy -- that's
18 basically a policy attachment.

19 DR. ALEXANDROVICH: Oh, actually it
20 doesn't refer for it very straightforward.

21 MS. GREEN: Uh-huh.

22 DR. ALEXANDROVICH: One of them is
23 just like an afterthought that is listed on the

1 end, and I think I wrote it down somewhere. Oh,
2 and I didn't list that one, what is the 00151,
3 whichever one that was. There's two policies
4 under the same name listed under the references,
5 so it really wasn't clear to me.

6 MS. GREEN: Uh-huh.

7 DR. ALEXANDROVICH: Not being part of
8 this, you know, I'm still figuring it out, but I
9 was quite moved with this.

10 MS. GREEN: Yeah, and that's how a
11 lot of our longer NPD's with the agency are is
12 because the formatted NPD is pretty succinct. We
13 usually reference a separate attachment just
14 because of the length of the document.

15 DR. ALEXANDROVICH: Yeah. Okay. So,
16 this really is an attachment --

17 MS. GREEN: Attachment to that.

18 DR. ALEXANDROVICH: -- to what --

19 MS. GREEN: Yeah, those two things go
20 together for each program.

21 DR. ALEXANDROVICH: Okay. Not
22 totally clear. You might want to check with how
23 it's referred to in this part --

1 MS. GREEN: Uh-huh.

2 DR. ALEXANDROVICH: -- and maybe just
3 attach the signature page so people can scan
4 through to find stuff. I know we don't vote on
5 any of this, but another thing that might be
6 helpful, and perhaps agency-wide, is a list of
7 acronyms. Oh, gosh, these are --

8 MS. GREEN: So -- and that is -- just
9 so you know, again, the technical document that
10 we're talking about is a whole separate NPD that
11 you do not have in your packet.

12 DR. ALEXANDROVICH: I know, but does
13 it have acronyms in it?

14 MS. GREEN: Yes, within that there's
15 a whole dictionary, there's a whole --

16 DR. ALEXANDROVICH: Okay.

17 MS. GREEN: -- definitional section,
18 and because these are companion documents, you
19 should use them in tandem, so if I've got the
20 technical NPD that Mike presented --

21 DR. ALEXANDROVICH: Right.

22 MS. GREEN: -- and I'm trying to go
23 through the State Cleanup or the VRP program, I

1 grab -- let's say the VRP -- I grab that resource
2 guide, that program guide, that NPD, and the
3 technical, and I use them together.

4 DR. ALEXANDROVICH: Okay. So, I
5 guess reading it, it wasn't clear to me that's
6 what I needed to do, but then again, I'm not
7 cleaning something up, so I'm a little less
8 experienced in that.

9 MS. GREEN: Your comments are well
10 taken, though. I appreciate them.

11 DR. ALEXANDROVICH: Thank you.

12 COMM. ROCKENSUESS: We'll make sure
13 when we post them on the Web site that they're --

14 DR. ALEXANDROVICH: Scannable --

15 COMM. ROCKENSUESS: Yeah, they're --

16 DR. ALEXANDROVICH: -- yeah, they're
17 searchable.

18 MS. GREEN: Yeah, we can do that.

19 DR. ALEXANDROVICH: Oh, also, just
20 one other comment. In 0082, whichever one that
21 was, you have consultants under your list of
22 definitions, but there's no definition, just the
23 consultants dash. I happened to catch that.

1 MS. GREEN: In 0082?

2 DR. ALEXANDROVICH: Yeah.

3 MS. DORSEY: Petroleum.

4 MS. GREEN: Petroleum? Okay.

5 DR. ALEXANDROVICH: I think that's
6 everything.

7 MS. GREEN: Any other questions or
8 comments that we can help with, answer, provide
9 clarity?

10 MR. RULON: I have maybe just one
11 different question. When you attach a deed
12 restriction to a property and that property
13 changes hands, is IDEM notified of that so that
14 you know who the current owner is, or --

15 MS. DORSEY: Unfortunately not.

16 MS. SCHROWE: If I can --

17 MR. RULON: So, if a company went
18 into a small township and it wanted to do
19 something that was prohibited, who catches that,
20 or does anybody?

21 MS. GREEN: Well, they are supposed
22 to notify the property owner, the person who is
23 selling, and sometimes the buyer -- Lynette's

1 going to tell me I'm all wrong -- but if there's
2 a transaction, in theory, we should be notified.
3 That doesn't always happen. There's not
4 something that says -- we do say you have to
5 notify us, but there's not -- there's not like an
6 automatic trigger, there's not a fine, there's
7 not -- there's not these negative things that
8 happen if you don't do it.

9 So, there are times when properties are
10 sold and we don't know. If they want to change
11 their environmental restrictive covenant and they
12 say, "You know what? I want to buy this
13 property, and I really don't think that the
14 conditions that were written 20 years ago or 10
15 years ago really are valid any longer," or "I
16 want to change things, I really do want to live
17 on that site. It's on old brick factory and I
18 want to, you know, build my nice cool loft in it,
19 and I'm willing to do those things that take
20 those restrictions off," or look at the property
21 and say, "You know what? Times have changed,
22 that contamination's sort of naturally degraded,
23 or it went somewhere, I don't know where it went,

1 but it's not here anymore," whatever, then you
2 can re-evaluate.

3 But there isn't something like at a
4 recorder's office that says, "Oh, this property
5 transaction is happening, red flag, I've got to
6 notify IDEM that this property is changing
7 hands." But the deed -- it does run with the
8 deed. So, in theory, if you are the new property
9 owner, when you are buying your property and
10 they're doing the research on the title, that
11 that would pop up and you will see, "Oh, I'm
12 going to buy this property. It has these
13 restrictions on it."

14 Lynette, what did I leave out or say
15 wrong?

16 MS. SCHROWE: Nothing.

17 MS. GREEN: If it's too long, don't
18 tell anybody.

19 MS. SCHROWE: Okay. No, I think that
20 summarizes it. There is a caveat within the body
21 of the restrictive covenant that is very specific
22 that you have to pass on that knowledge in the
23 deed to future property owners. And then we also

1 do self-audits, where we mail out requests for
2 information to property owners that are
3 responsible for restricted sites.

4 MS. GREEN: We started that -- it's
5 been a while back, but we had a concerted effort
6 starting last year --

7 MS. SCHROWE: Last January, yeah.

8 MS. GREEN: -- where we are looking
9 at everyone that we know about, because Lynette
10 maintains a registry of those, so we know what
11 goes out of our office, we know which ones we've
12 put on there. And so, it's open for realtors or
13 anybody to tap into that and see if their
14 property has an ERC, if it's -- it may or may not
15 pop up because of the title search. Hopefully it
16 does, but that's a different way of checking
17 that.

18 But anyway, we do have a person that we
19 identified and said, "Your entire job is to
20 contact people that have these restrictions,
21 these ERC's, on their property and actually ask
22 them, 'Do you -- do you know you have an ERC?'
23 You know, maybe the property changed hands five

1 times since we knew about it. You know, 'Do you
2 know you have it? Do you understand your
3 restrictions? You know, we're here to help, but
4 as a reminder, here's what you're supposed to be
5 doing and making sure that you know you have an
6 ERC.'" It would be really nice if we had
7 something that -- you know, there was some kind
8 of automatic notification to us to say, "Oh, this
9 property just changed hands. You might want to
10 know about that," but something like that doesn't
11 exist at this point.

12 MR. RULON: Thanks.

13 CHAIRMAN GARD: Any other questions?

14 (No response.)

15 MS. DORSEY: Okay. Thank you.

16 CHAIRMAN GARD: The next item on the
17 agenda is the Citizen's Petition. This is going
18 on, what --

19 DR. ALEXANDROVICH: Three years.

20 CHAIRMAN GARD: -- three or four
21 years, at least. We have several people that
22 want to provide updates.

23 Commissioner, who are they? Do you know?

1 MR. WILLIAMS: Sen. Gard, I'd be
2 happy to speak on behalf of the Petitioners. I
3 am Craig Williams, representing here the City of
4 Angola and the Petitioners for -- I guess
5 originally sort of put this together, and if it's
6 okay, for the benefit of the new members, I'll
7 sort of go through a 10,000-foot view of why
8 we're here, sort of what we've done, and I would
9 like to address a couple of items that I think,
10 during our discussion at the last meeting, there
11 may have been some confusion on, and I just want
12 to make sure we clear the air on that as well.

13 Three years ago, Chair Gard, almost to the
14 day, representatives of Angola and Mishawaka
15 presented a Citizen's Petition signed by Indiana
16 residents and community leaders of Angola,
17 Mishawaka, Rensselaer, Columbia City, New Haven,
18 Peru, Huntington, and many other Indiana
19 communities.

20 The petition was submitted for the purpose
21 of requesting the Board direct the Commissioner
22 and his staff to develop an Indiana-appropriate
23 version of the 2012 EPA Recreational Water

1 Quality Criteria for the purpose of providing
2 regulatory certainty for CSO communities.

3 A little history on that, in 1994 the EPA
4 issued the combined sewer overflow control
5 policy, a policy that would ultimately provide
6 the framework for historic expenditures in
7 communities across the United States, including
8 those in Indiana. At the time, EPA staff
9 identified a regulatory certainty as one of the
10 primary goals.

11 Communities would develop plans to meet
12 individual states' level of control. State
13 regulatory agencies would review and approve
14 those plans, and then those -- once those plans
15 were completed and results were verified by the
16 state agency, communities would be assured
17 compliance for the water quality standard in
18 accordance with the CSO policy.

19 Around 2014, as communities in Indiana
20 completed their long-term control plans and
21 anticipated post-construction reviews and
22 approvals of their work, those communities were
23 notified that combined sewer overflows, any

1 residual combined sewer overflows, were now
2 considered prohibited discharges.

3 That's a violation of the Clean Water Act,
4 and IDEM would use enforcement discretion to
5 determine if those communities complied with CSO
6 policy. Our position is this is a stark contrast
7 to the EPA's 1994 CSO policy and Indiana law and
8 guidance documents on the subject.

9 We believe that regulatory certainty is
10 possible. Back in 1994, when the CSO policy was
11 developed, EPA acknowledged that successful
12 implementation included two primary parts.
13 First, a significant investment by utilities to
14 complete sewer separation and wastewater
15 treatment improvements. The current level of
16 expenditures by Indiana communities is difficult
17 to quantify, but the total cost by all Indiana
18 communities was estimated to be around four
19 billion dollars.

20 Second, modifying the national water
21 quality standards to accommodate the CSO
22 discharges that EPA knew would remain, residual
23 discharges. That was the knee-of-the-curve

1 concept.

2 Even from the beginning, EPA and IDEM
3 staff recognized that once communities had
4 completed CSO long-term control plans, CSO's
5 would still occur during certain wet-weather
6 events. Although not specifically developed to
7 address combined sewer overflow discharges, that
8 2012 criteria we believed at the time would
9 provide a pathway for Indiana communities.

10 I'll note here that at that time, three
11 years ago, for the four years prior to that, we
12 had been working with Office of Water Quality
13 folks on this issue, but our discussions had
14 stalled for a number of reasons. And really,
15 because Indiana is so far ahead of the game as
16 compared to the rest of the country, we were
17 trying for forge new paths, and still are.

18 The Environmental Rules Board chose to
19 take the petition, but directed -- or to table,
20 I'm sorry, to table the petition, but directed
21 our work group to continue meeting for the
22 purpose of developing a mutually agreeable path
23 to regulatory certainty for CSO communities.

1 The Petitioners provided a document to
2 Office of Water Quality staff and the Board, what
3 we refer to as the White Paper, which provided
4 what we believe were feasible pathways that could
5 be adopted as implementation policies that follow
6 the intents and purposes of the national and
7 state CSO policy, as well as national examples of
8 implementation language from other states to
9 support our position.

10 Office of Water Quality staff wanted to
11 utilize the existing use attainability path,
12 rules to test the focus use attainability
13 analysis, which might provide an acceptable
14 outcome using existing data and documentation,
15 and this is sort of where we find ourselves
16 today.

17 Any questions on that specifically before
18 I jump into the topics that I think we wanted to
19 make sure we cleared up?

20 (No response.)

21 MR. WILLIAMS: Okay. During the last
22 hearing, there were a couple of items that we
23 felt maybe -- this topic is extraordinarily

1 complex. We struggle ourselves in our work
2 groups to sometimes understand the exact pathways
3 that we're talking about, and so, understandably,
4 I think there was some misunderstanding on our
5 intentions.

6 First of all, the Petitioners -- our
7 proposal will not lower water quality standards,
8 water quality -- or water quality standards. CSO
9 communities have spent hundreds of millions of
10 ratepayer dollars to implement long-term control
11 plans that IDEM approved to comply with federal
12 and state water quality laws.

13 And there are communities that are -- that
14 have -- that are waiting on -- they've completed
15 projects and are waiting to see if their projects
16 will comply. They're in a post-construction
17 monitoring period. A number of communities are
18 still implementing those programs, and will be
19 for the next 10 or 15 years.

20 The federal CSO policy and Indiana
21 acknowledge that most CSO communities will still
22 experience occasional residual discharges during
23 high-rain events. By law, Indiana must have

1 recreational water quality standards that are
2 attainable for CSO communities upon full
3 implementation of their long-term control plans.

4 The elevated levels of E. Coli in any CSO
5 discharge make it impossible for any CSO
6 discharge to comply with Indiana's recreational
7 water quality standards as currently implemented,
8 which are -- and this is what evaluates
9 compliance, based on models that are developed
10 without regard to peak flow conditions actually
11 existing at the time of the CSO discharge, and
12 without regard to the approved long-term control
13 plan.

14 Our continued work with IDEM to create a
15 workable compliance solution for communities led
16 us to prepare a White Paper proposing revisions
17 to how Indiana implements the existing
18 recreational water quality standards for CSO
19 discharges that occur after implementation of an
20 approved long-term control plan.

21 We've provided a copy of this White Paper
22 to IDEM Office of Water Quality staff as well as
23 the Board last fall, and we will include a copy

1 of this White Paper again today for the record.
2 Our White Paper does not propose any new or
3 revised water quality standards.

4 Because the White Paper only proposes
5 implementation and revisions, we believe a rule
6 modification is not required. Because of the
7 implementation efforts of CSO communities, CSO
8 overflows now account for a small, often
9 negligible change in the receiving waters of many
10 communities, especially when compared with
11 nonpoint-source pollution during wet-weather
12 events.

13 A more realistic and affordable pathway to
14 compliance for CSO communities that have fully
15 implemented their long-term control plans and
16 post-construction compliance monitoring will not
17 result in reduced water -- water quality or
18 standards.

19 The second item was that the recreational
20 water quality standard implementation proposal
21 set forth in our White Paper would -- it would
22 result in additional CSO's, and it will not
23 result in up to 36 CSO -- or overflows per year.

1 We're seeking a pathway to compliance for
2 communities that have fully implemented their
3 long-term control plan and have completed
4 post-construction compliance monitoring,
5 demonstrating that they have met the prescribed
6 levels of control for CSO's.

7 Meeting these levels of control in the
8 long-term control plan is an ongoing requirement
9 for CSO communities, and to our knowledge, no
10 Indiana community has a long-term control plan
11 that would allow for 36 overflows per year.

12 The White Paper simply proposes that once
13 a community fully implements its approved plan,
14 the water quality standards are implemented in a
15 way that residual CSO discharges are not
16 automatically deemed a violation of the
17 standards.

18 This approach is supported by existing
19 Indiana law, which states that upon
20 implementation of the approved long-term control
21 plan, the plan fulfills the water quality goals
22 of the state with respect to wet-weather
23 discharges that are a result of overflows from

1 the combined sewer system addressed by the plan.

2 Finally, the third item, making the
3 compliance process more cost effective is not
4 unfair to communities that have already met the
5 current compliance requirements. Economic and
6 social impacts have always been considered when
7 developing long-term control plans and use
8 attainability analysis.

9 By law or guidance, Indiana can make clear
10 that implementation revisions could not be used
11 as grounds for a community to revise its
12 long-term control plan to lower its level of
13 control. By that same token, a community would
14 not be able to use implementation revisions to
15 make compliance with long-term control plans
16 cheaper.

17 The use attainability analysis would
18 continue to remain as an option for communities
19 who want to take that pathway. However, only one
20 CSO community has successfully had a use
21 attainability analysis approved. The second UAA,
22 use attainability analysis, is facing unexpected
23 scrutiny by the EPA.

1 The UAA process is expensive, with
2 uncertain results for many other communities that
3 will be facing these same compliance issues in
4 the coming years. IDEM Office of Water Quality
5 staff wanted to explore a streamlined, focused
6 use attainability analysis approach that ideally
7 would utilize the documentation originally
8 created as part of a community's long-term
9 control plan development, and other readily
10 available information, to generate the
11 application.

12 The Petitioners actively participated in
13 developing this documentation for a test
14 community, but the Petitioners and Office of
15 Water Quality staff struggled with a test
16 submission that would survive scrutiny from the
17 EPA. This, coupled with EPA's recalcitrance
18 regarding even a traditional use attainability
19 analysis substantiates our concerns with any use
20 attainability analysis process.

21 Furthermore, a majority of Indiana's CSO
22 communities never contemplated the need for a
23 UAA, as the combined sewer overflow policy as

1 well as affected communities, anticipated the
2 recreational water quality standards for CSO
3 discharges would be modified to follow Indiana
4 law and federal CSO policy.

5 We believe that the existing law is not
6 being implemented as written or intended, and
7 we're merely asking for compliance determination
8 to be better aligned with Indiana statute and the
9 federal CSO policy.

10 And I will -- again, I will leave a copy
11 of the White Paper and our comments for the
12 record today.

13 Any questions?

14 CHAIRMAN GARD: Well, I do want to
15 make a comment, and, first of all, thank you very
16 much for your work on this for over a couple of
17 years. I think it's extremely important.

18 Like you say, it's an extremely complex
19 issue, and when we wrote the law back in, what,
20 mid-1990's, I guess, we did intend that there --
21 we put a provision in, and we called it "the knee
22 of the curve," you reach a point that large
23 amounts of money don't give you much return on

1 your investment. And so, you know, we wanted
2 there to be a cutoff place someplace that still
3 allowed people to be in compliance with the water
4 quality standards. And I think you all are -- I
5 appreciate what you're doing.

6 MR. WILLIAMS: Thank you. Thank you,
7 Chair.

8 CHAIRMAN GARD: Any other questions?

9 (No response.)

10 CHAIRMAN GARD: Is there somebody
11 from the agency that wants to address, you know,
12 some of the work that you've done?

13 DR. ALEXANDROVICH: There'll be some.

14 MR. HIGGINBOTHAM: Thank you, Board
15 members. My name's Paul Higginbotham, Deputy
16 Assistant Commissioner for the Office of Water
17 Quality. I didn't know we were going to give a
18 master dissertation today. I came unprepared,
19 with nothing.

20 MR. WILLIAMS: You'll do fine.

21 MR. HIGGINBOTHAM: So, with a lot of
22 stuff that Craig has said, you know, we have been
23 working on this regulatory certainty.

1 First off, combined sewer overflows, just
2 to make sure everybody understands, raw sewage
3 mixed with some stormwater going into our lakes
4 and streams and rivers in the state. So, I want
5 to make sure everybody understands that.

6 So, the biggest -- probably one of the
7 biggest things in our generations for cleaning up
8 the water is by addressing combined sewer
9 overflows. Hands down, one of the biggest
10 improvements of water quality we've seen in our
11 generation. So, it's a big deal, it's a big
12 thing, it's a big issue.

13 I applaud the efforts. We've worked hard
14 with the communities, the consultants, the
15 attorneys to get to where we are today in
16 developing these long-term control plans and
17 maintaining these long-term control plans to
18 improve this.

19 Regulatory certainty is the next thing;
20 right? That sounds great. This is kind of a
21 unicorn, it really is. I mean I'm just being
22 honest and pragmatic. Regulatory certainty is a
23 unicorn. We don't have that in anything we do in

1 our lives.

2 What we can do, what we can control here
3 at the state, is do what we have been doing. We
4 work very closely with our communities, work very
5 closely with the consultants, to make sure that
6 we find that middle ground, that sweet spot to
7 where everybody can live with it.

8 And I think that that's what we've done.
9 That's what we've done as an agency for 20 years.
10 That's what the legislature's done though the use
11 attainability analysis process, which is the only
12 recognizable federal process to give regulatory
13 certainty. That's the only way to do it, because
14 that's in the Clean Water Act.

15 So, if you want regulatory certainty, like
16 it or not, you have to go through a use
17 attainability analysis process and get a
18 wet-weather rulemaking change, which is allowed
19 by our legislature. The issue of this 2012
20 criteria thing, it wasn't meant for combined
21 sewer overflow communities, and there's no place
22 in this country that is doing it that way and
23 implementing it that way.

1 Interpretation of our existing ten-percent
2 rule or whatever you want to call it as it
3 relates to E. Coli, yeah, they have a White Paper
4 that looks good and looks great, but when it
5 comes to it, I don't have the ability, you as the
6 Board don't have the ability, and the legislature
7 does not have the ability to override the Federal
8 Government, and it comes to having compliance
9 with the Clean Water Act. We have to comply with
10 the Clean Water Act.

11 So, I am more than happy to continue to
12 have discussions with the Petitioners to get to
13 some middle ground. We've talked -- you know, a
14 year or two ago we've talked about this issue of
15 prohibit -- prohibitive discharge permit
16 language. We've already talked about changing it
17 and not having the prohibition, specifically
18 prohibited language in there, if that is a
19 concern, because we do have the nonrule policy
20 document, like OLQ did a lot of those today with
21 you guys. We have a nonrule policy document out
22 there on how we apply and interpret the
23 unfortunate discretion related to these

1 overflows.

2 So, I can't change my mind on this, say,
3 "I want to do it differently." No, there's a
4 public document out there that's going through
5 this process that allows for us to say how we're
6 going to apply this enforcement discretion. So,
7 is it enforcement discretion? Yes, yeah, it's
8 enforcement discretion, but it is better than
9 nothing, than what we have at the moment, and
10 it's actually pretty good, because it's a public
11 document that has to go through a comment period.

12 So, again, I don't have a lot of
13 rambling -- other than the rambling I've been
14 doing, but again, I'd just say that I
15 personally -- the 2012 criteria approach is not
16 going to work to get them to the certainty that
17 they want. The use attainability analysis is a
18 process, a basic process. It's recognized by the
19 Clean Water Act.

20 Have we ran into a hiccup with the Fort
21 Wayne use attainability analysis? Yeah, but
22 we're working through it, we're working with Fort
23 Wayne, we're working with EPA, we're working with

1 our Office of Legal Counsel to address that issue
2 and get through this, just like we get through
3 everything else.

4 So, that's about all I have to say. Any
5 questions for me?

6 CHAIRMAN GARD: Any questions?

7 DR. ALEXANDROVICH: Yes, I do. The
8 enforcement discretion document, do you have the
9 number on that one? I'm not sure I --

10 MR. HIGGINBOTHAM: I do -- off the
11 top of my head, I do not, but --

12 DR. ALEXANDROVICH: Okay.

13 MR. HIGGINBOTHAM: -- I will send it
14 through -- Chris will send it to the Board.

15 DR. ALEXANDROVICH: Thanks. And
16 then -- so, what were the hiccups for Fort Wayne?

17 MR. HIGGINBOTHAM: Some of it has --
18 well, am I okay to talk a little bit about it?

19 MS. KING: Do it.

20 MR. HIGGINBOTHAM: I think one of the
21 concerns with the Fort Wayne situation, in my
22 interpretation, is that theirs -- this -- they
23 went down this -- the rabbit hole of -- okay.

1 Well, if this is the best they can do, knee of
2 the curve, the long-term control plan, level of
3 control where they get to four overflows in a
4 typical year -- four or three, whatever that may
5 be -- is: Do they have the ability, through
6 non-CSO, nonpoint source activities, to make up
7 that additional gain in addressing E. Coli, like,
8 you know, failing septic systems or agricultural
9 runoff related issues? Is there a way that
10 Fort Wayne can try to go out there and do some of
11 that activity in addition to what they're doing
12 CSO-long-term-control-plan-wise to address
13 ongoing other E. Coli sources? Right?

14 So, with that being said, I think Fort
15 Wayne, like citizen -- or citizens here in
16 Indianapolis, they do a lot of things that are
17 outside their permitting requirements to address
18 some of those nonpoint source issues. So --

19 DR. ALEXANDROVICH: Is Fort Wayne
20 under a federal consent decree?

21 MR. HIGGINBOTHAM: Yes, yes, they
22 are. So --

23 DR. ALEXANDROVICH: So, that

1 additional step wasn't in their agreement, was
2 it?

3 MR. HIGGINBOTHAM: And that's where
4 the hiccup is, is -- is it's one thing for a
5 community to want to voluntarily do these
6 additional activities that cost them millions of
7 dollars, or being forced by a regulating entity
8 to do it as a permit condition.

9 And that's where the hiccup is, is -- the
10 next discussion is going to be with EPA and
11 Fort Wayne is about this voluntary approach of
12 all of these additional things that they already
13 do -- and they're an MS4 community as well, so
14 they do a lot of different things as it relates
15 to stormwater -- or -- or they have to be forced
16 to do it through a permit, and that's kind of
17 where the discussion lies right now.

18 And we agree with Fort Wayne, that
19 situation should be voluntary, because it's
20 something they're already doing and it's outside
21 the scope of the long-term control plan, the
22 combined sewer overflow issue.

23 Yes.

1 DR. NIEMIEC: Based on these updates,
2 which have been very helpful, is it not now the
3 conclusion that the original petition is beyond
4 the purview of the Rules Board and that there's
5 nothing further that can be achieved with that
6 petition with the Rules Board itself, but that
7 they look to the pathways that have a plan on how
8 to address it with the assistance of IDEM and the
9 work group?

10 MR. HIGGINBOTHAM: I would -- I can
11 only speak for myself, but I would say yes, it's
12 outside the 2012 issue, and even their White
13 Paper is outside of that. It's more of an
14 interpretation of what -- our existing water
15 quality standards. That's my opinion.

16 CHAIRMAN GARD: And I am prepared,
17 when we finish this discussion, to suggest a
18 motion to deny the Petition adopting the 2012 --
19 or to start a rulemaking to adopt the 2012 --

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: -- recreational
22 criteria. And also, as part of that, I would
23 like, you know, the agency to commit to

1 continuing these discussions and work through it.
2 I think they've made a lot of progress, actually.

3 DR. NIEMIEC: Yeah, it sounds that
4 way.

5 DR. ALEXANDROVICH: I guess I have
6 one question for Craig, maybe, because I did
7 read -- we had a discussion after the last
8 meeting, both of us -- all three of us, and I was
9 like, "Oh, I need to reread that White Paper."
10 And you've mentioned, Craig, that it's a matter
11 of implementation, and I do not understand fully
12 how the stuff in the White Paper,
13 implementation-wise defers from how things are
14 currently being implemented. It has something to
15 do, if I understand it right, with a sample size.
16 Is it as simple as saying, you know, a sample
17 size is either 30 days or an hour?

18 MR. WILLIAMS: This is one of the
19 areas where I think that the agency and the
20 Petitioners have not -- you know, we don't see
21 eye to eye on -- with that. Our position is --
22 so, for a waste water treatment plant that is
23 disinfecting waste water, the water quality

1 standard for E. Coli, their limit is 235 colonies
2 per a hundred mil or whatever.

3 Indiana has a daily maximum limit for
4 E. Coli. Just by the nature of the testing and
5 an analysis of that, there's some days where you
6 may have a zero and the next day have 400 and the
7 next day have a zero. Well, what happened there?
8 Was there a problem with treatment, or was it a
9 method problem? And so, IDEM, about -- I would
10 say about eight years ago --

11 MR. HIGGINBOTHAM: Yeah.

12 MR. WILLIAMS: -- does that sound
13 about right? -- changed the rule to say, "If you
14 do 30 days of analysis, you can disregard ten
15 percent of those samples, and if they're over
16 that 235," recognizing the variability in the
17 sampling.

18 And so, with our White Paper, what we're
19 recommending is that -- let me back up. The
20 primary concern with CSO discharges is high
21 E. Coli, and so, when we come to sampling, first
22 of all, the difficulties of sampling an
23 intermittent discharge, two inches of rain at

1 3:00 in the morning, how do you get staff safely
2 out to these outfalls to collect the sample?

3 I don't know how long that event's going
4 to last, so how many samples do we need to take?
5 There's just a number -- is it even safe to
6 approach where we need to sample due to rainfall,
7 stream conditions, et cetera, et cetera? And so,
8 what -- we're recognizing that any CSO event is
9 going to violate E. Coli standards.

10 What we're saying is we can utilize that
11 same concept that's already being applied to
12 every wastewater treatment plant in Indiana right
13 now, and if you assume an average event -- and
14 I'm going off the top of my head, but let's say
15 the average event for a community is maybe 12
16 hours of discharge three times a year. By ten
17 percent, you're never going to -- those elevated
18 E. Coli from that CSO event don't make up the
19 significant fraction of bacteria that are present
20 in that stream to violate the water quality
21 standards. So, that's the pathway that we're
22 proposing.

23 Now, again, this is where the agency and

1 the Petitioners -- you know, we don't -- we're
2 trying to come up with solutions, but from my
3 side, it's an easy fix. Paul and his crew and
4 the Office of Legal Counsel are the ones that
5 have to defend that against EPA. We recognize
6 that, but that's our position.

7 DR. ALEXANDROVICH: So, that -- so,
8 where that's calculated, how do you determine if,
9 I guess, the stream meets the standard or your
10 effluent meets it? I mean I guess where is it?
11 If it's not in our -- our regulations that shows
12 how to calculate it, is it in a permit? I mean
13 that's where I'm confused is how implementation
14 is different.

15 MR. WILLIAMS: You are -- you are
16 hitting the exact struggle that we are having
17 with this, because whether you talk about the
18 E. Coli at the point of discharge, at that CSO
19 outfall, or downstream, most streams that are
20 impacted by wet weather, with or without CSO
21 inputs, are exceeding the E. Coli water quality
22 standard.

23 And so, now what do you do? Because if

1 that stream is already exceeding the water
2 quality standard before gallon one of the CSO
3 discharge, then any input of that CSO outfall
4 would be contributing to the violation of that
5 water quality standard.

6 And that -- the '94 CSO policy recognized
7 that you could not apply values that were based
8 on standard stream conditions during dry weather
9 in a wet-weather-event scenario. And so, the '94
10 CSO policy very intentionally said, "Listen,
11 coming at it from a pure 'we're going to sample
12 and we're going to evaluate the samples,' we
13 cannot say -- we can't meet that water quality
14 standard."

15 So, they wholesale -- the '94 CSO policy,
16 which was adopted in the Code of Federal
17 Regulations as part of the Clean Water Act,
18 wholesale, stated that once a community
19 completes -- gets long-term control plans and
20 meets those post-construction monitoring
21 requirements, any residual CSO -- CSO's will meet
22 water quality standards.

23 And so, we're not -- when we talk about --

1 when we talk about in-stream samples or when
2 you're looking at that, we're not even suggesting
3 that the samples should have to be taken. We're
4 taking the simple logical approach that if a CSO
5 event didn't occur more than ten percent of the
6 time, there's no way it could violate the water
7 quality standards.

8 MR. RULON: It seems like a really
9 weird way to play statistics, to me.

10 DR. ALEXANDROVICH: Yeah.

11 MR. RULON: Ten percent of samples
12 above -- I'd love to be able to break the law ten
13 percent of the time and get away with it because
14 IDEM says it's okay. I mean I'd love to see the
15 statistical analysis that IDEM did to give you
16 that ten percent.

17 And the longer you talk, the less I'm
18 persuaded that your position is a fair one for
19 the environment, just to be honest with you.
20 That's -- that right there just seems to me like,
21 "Well, why are we giving them a break ten percent
22 of the time?" Why would we? We don't get that
23 in CAFO's, we don't get that in landfills.

1 I mean it just seems to me not to be the
2 point of the question, which is: I just don't
3 think the Petitioners' Petition needs to be
4 supported by the Board. That's all I'm -- that
5 part right there is troubling to me, is: Why are
6 we giving utility plants a ten-percent break?
7 Because that's pretty easy to play with numbers
8 and never have a problem, if you're going to give
9 me a ten-percent window. I --

10 CHAIRMAN GARD: Uh-huh.

11 MR. RULON: -- it just seems to me
12 it's excessive.

13 MR. WILLIAMS: Twenty, 25 years of
14 running a wastewater treatment plant, I can
15 assure you it's not. It's --

16 MR. RULON: Well, then I would
17 suggest the treatment plants aren't working well
18 enough.

19 MR. WILLIAMS: No, the -- there is no
20 other parameter that wastewater treatment plants
21 are measured against that this type of allowance
22 is given. It is because of the nature of the
23 sampling method that is problematic.

1 That 235, by the way, was a limit set to
2 establish bleach closure values. There was -- it
3 was not a limit that was set because of -- most
4 of your standard pollutants, let's say
5 phosphorous or ammonia, you set a limit because
6 you can demonstrate that at a certain level, that
7 discharge is toxic to the environment, to clams
8 or to fish or things of that nature. And so,
9 there's a pathway to determine where that level
10 is at.

11 E. Coli is different, and I -- I've got --
12 I'm not prepared to go into -- it's not
13 appropriate to here, but the purpose for that is
14 because that specific pollutant, E. Coli, is a --
15 it's a -- it is a tricky method to sample.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: I have a question for
18 Paul.

19 MR. WILLIAMS: Yes, sir.

20 MR. HIGGINBOTHAM: Yes, sir. Man, I
21 feel like I'm back in the old days getting
22 grilled by professors.

23 MR. ETZLER: What's the daily

1 discharge limit for E. Coli for a wastewater
2 plant?

3 MR. HIGGINBOTHAM: Two thirty-five,
4 125.

5 MR. ETZLER: So, any exceedence of
6 that is a violation?

7 MR. HIGGINBOTHAM: Yes.

8 MR. ETZLER: Well, having run
9 wastewater plants for a number of years, I don't
10 think we ever experienced the difficulties of
11 CSO's, because we were not a combined sewer
12 facility, and we never had a problem with
13 sampling. Two thirty-five is the limit, and that
14 ought to be the limit every day, regardless, from
15 my perspective.

16 CHAIRMAN GARD: Yes.

17 DR. NIEMIEC: Although this continues
18 to be interesting, is it too soon to move forward
19 with --

20 CHAIRMAN GARD: No --

21 DR. NIEMIEC: -- okay.

22 CHAIRMAN GARD: -- not at all. Like
23 I said at the last meeting, I think it's time to

1 put the Petition to bed and move forward,
2 continue to move forward with discussions between
3 the agency and the Petitioners. So, I'm prepared
4 to make a motion to deny the original request to
5 start a rulemaking to adopt the 2012 recreational
6 criteria federal regulations, contingent upon the
7 agency's promise to continue the ongoing
8 discussions with the Petitioner work group to
9 address the concerns raised in the Petition. So,
10 that actually is a motion.

11 DR. NIEMIEC: Second.

12 CHAIRMAN GARD: Okay.

13 Commissioner, do you have a comment about
14 continuing discussions and so forth?

15 COMM. ROCKENSUESS: Yeah, we'll
16 absolutely continue discussions with the
17 Petitioners. I understand Craig's point.
18 Regulatory certainty is super important, not only
19 to them, but to me, and so, we want to provide
20 that as best we can, and we will continue to work
21 with them to find a solution.

22 CHAIRMAN GARD: Okay. Thank you.

23 We -- we have a motion on the floor and

1 seconded. Is there -- is there any further
2 discussion?

3 DR. ALEXANDROVICH: Can we add to
4 that motion to have some kind of quarterly,
5 semiannual updates on -- on how you guys have
6 been working to this? Because, you know, we
7 heard a lot that there were these meetings and
8 there were talks, but I don't know that there
9 were any minutes, and, you know, so I'm like --
10 and it's been going on seven years now, not just
11 the three years since the Petition.

12 So, you know, I know you guys work in good
13 faith, but I also think that, you know, it needs
14 to be -- we need to come up with a way that we
15 can beat this, give them certainty, get the EPA
16 somehow, God willing, on board and get it fixed.

17 MR. BORTNER: If I may, if we select
18 today to follow with the motion, that takes us
19 out of it. If they want to inform us as a
20 courtesy, that's fine, but once we kick it out of
21 this group, we've kicked it out of this group.
22 We don't get to -- you don't get to still monitor
23 and opine on it. Once it's out, it's out. Like

1 I said, if they want to come back as a courtesy
2 to inform us, but once you put it back to them,
3 you put it back to them.

4 DR. NIEMIEC: Based on what Dan
5 mentioned, it sounds like individual Board
6 members could request an update and --

7 CHAIRMAN GARD: Absolutely.

8 DR. NIEMIEC: -- make sure of
9 participation.

10 MR. BORTNER: I think every one of us
11 wants to know. I just don't want to create an
12 obligation for them to have to come back.

13 CHAIRMAN GARD: Right.

14 MR. DAVIDSON: And if through your
15 ongoing discussions you determine there is an
16 applicable approval, I'd love to hear it. I just
17 don't know that the 2012 standard is --

18 CHAIRMAN GARD: Right.

19 MR. DAVIDSON: -- where it needs to
20 go.

21 CHAIRMAN GARD: Exactly.

22 Okay. I don't know that we need to amend
23 the motion. I think just stick with it, and --

1 DR. ALEXANDROVICH: Yeah.

2 CHAIRMAN GARD: -- then we'll get
3 periodic updates, and we can ask for them. So,
4 we have a motion on the floor, seconded. This is
5 going to be a roll-call vote.

6 Dr. Alexandrovich?

7 DR. ALEXANDROVICH: Yes.

8 CHAIRMAN GARD: Mr. Bortner?

9 MR. BORTNER: Yes.

10 CHAIRMAN GARD: Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: Mr. Green?

15 MR. GREEN: Yes.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Mr. Ketzenberger?

19 MR. KETZENBERGER: Yes.

20 CHAIRMAN GARD: Ms. Kozyrski?

21 MS. KOZYRSKI: Yes.

22 CHAIRMAN GARD: Ms. Nelson?

23 MS. NELSON: Yes.

1 CHAIRMAN GARD: Dr. Niemiec?

2 DR. NIEMIEC: Yes.

3 CHAIRMAN GARD: Mr. Rulon?

4 MR. RULON: Yes.

5 CHAIRMAN GARD: Ms. Totten?

6 MS. TOTTON: Yes.

7 CHAIRMAN GARD: And the Chair votes
8 aye, so the vote is thirteen to zero to deny the
9 Petition to begin a rulemaking to adopt the 2012
10 recreational criteria federal regulations. So,
11 thank you all for that discussion. I think we
12 needed it, and at this point, it's really in the
13 agency's hands.

14 So, okay. This is an Open Forum. Is
15 there anyone who wishes to address the Board
16 today?

17 (No response.)

18 CHAIRMAN GARD: Okay. The next
19 meeting of the Environmental Rules Board is
20 tentatively set for March 8th, 2023 at 1:30,
21 Conference Room A, Indiana Government Center
22 South. The meeting date is tentative and subject
23 to change. We will keep everyone updated when

1 this is confirmed and another date chosen.

2 Is there a motion to adjourn?

3 DR. NIEMIEC: So moved.

4 CHAIRMAN GARD: Okay. Second?

5 MR. RULON: Second.

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

8 MR. HORN: Aye.

9 MS. NELSON: Aye.

10 DR. ALEXANDROVICH: Aye.

11 MR. BORTNER: Aye.

12 MR. ETZLER: Aye.

13 MR. RULON: Aye.

14 MR. DAVIDSON: Aye.

15 MR. GREEN: Aye.

16 MR. KETZENBERGER: Aye.

17 DR. NIEMIEC: Aye.

18 MS. TOTTEN: Aye.

19 MS. KOZYRSKI: Aye.

20 CHAIRMAN GARD: Aye.

21 Opposed, nay.

22 (No response.)

23 CHAIRMAN GARD: Thank you all very

1 much for your patience and your participation.

2 DR. ALEXANDROVICH: And have happy
3 and safe holidays.

4

5 Thereupon, the proceedings of
6 November 9, 2022 were concluded
7 at 3:33 o'clock p.m.

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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 Wednesday, November 9, 2022 in this matter and
8 transcribed by me.

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

15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
17
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23

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