

1       BEFORE THE STATE OF INDIANA  
2       ENVIRONMENTAL RULES BOARD

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PUBLIC MEETING OF OCTOBER 14, 2015

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PROCEEDINGS

10 before the Indiana Environmental Rules Board,  
11 Beverly Gard, Chairman, taken before me, Lindy L.  
12 Meyer, Jr., a Notary Public in and for the State  
13 of Indiana, County of Shelby, at the Indiana  
14 Government Center South, Conference Center,  
15 Room C, 402 West Washington Street, Indianapolis,  
16 Indiana, on Wednesday, October 14, 2015 at 1:29  
17 o'clock p.m.

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

1 APPEARANCES:

2 BOARD MEMBERS:

Beverly Gard, Chairman

3 Thomas R. Anderson

Gary Powdrill

4 Dr. Ted Niemiec

Joanne Alexandrovich

5 Kelly Carmichael

Ken Rulon

6 William Etzler

Gail Boydston

7 Mike Mettler, Proxy, Department of  
Health

8 Devin Hillsdon-Smith, Proxy, Indiana  
Economic Development Corporation

9 David Bausman, Proxy, Lieutenant  
Governor

10 Bruno Pigott (nonvoting)

11 IDEM STAFF MEMBERS:

Donald M. Snemis

12 Martha Clark Mettler

Paul Higginbotham

13 Valerie Tachtiris

Samantha DeWester

14 Bruce Palin

Peggy Dorsey

15 Roger Letterman

Matt Stuckey

16 Nancy King

MaryAnn Stevens

17 Jessica Faust

Lauren Aguilar

18 Bruce Oertel

Jessica Reiss

19

PUBLIC SPEAKERS:

20 Bill Beranek

Tom Barnett

21 Bowden Quinn

Tony Sullivan

22 Vince Griffin

23 - - -

1 1:29 o'clock p.m.  
2 October 14, 2015

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4 CHAIRMAN GARD: The Chair sees a  
5 quorum, so I will call the Environmental Rules  
6 Board to order.

7 The first thing that I'd like to do is to  
8 go around the room again -- we do this every  
9 time, but there are always new people here -- and  
10 give us your name, even though it's in front of  
11 you, and who you represent.

12 MR. BAUSMAN: I'll start.

13 CHAIRMAN GARD: Bruno, why don't you  
14 start? You have a new title.

15 MR. PIGOTT: Thank you, Chairman.

16 Bruno Pigott, Chief of Staff, IDEM. Thank  
17 you very much.

18 MR. BAUSMAN: David Bausman, Director  
19 of Policy and Regulatory Affairs with ISDA. I  
20 serve as the proxy for the Lieutenant Governor.

21 MR. METTLER: Mike Mettler, proxy for  
22 the State Health Commissioner, Dr. Adams.

23 MR. HILLSDON-SMITH: Devin  
Hillsdon-Smith, Regulatory Affairs Liaison with

1 the Indiana Economic Development Corporation,  
2 representing the Secretary of Commerce as proxy.

3 MS. BOYDSTON: Gail Boydston,  
4 representing manufacturing.

5 CHAIRMAN GARD: Beverly Gard,  
6 representing the general public.

7 MR. ETZLER: Bill Etzler, small  
8 business.

9 MR. ANDERSON: Tom Anderson,  
10 environment.

11 MR. POWDRILL: Gary Powdrill,  
12 representing the general public.

13 DR. NIEMIEC: Ted Niemiec, health  
14 care.

15 DR. ALEXANDROVICH: Joanne  
16 Alexandrovich, local government.

17 MR. CARMICHAEL: Kelly Carmichael,  
18 utilities.

19 MR. RULON: Ken Rulon, agriculture.

20 CHAIRMAN GARD: Thank you.

21 The first order of business today is the  
22 approval of the summary of the July the 8th, 2015  
23 Board meeting. Are there any additions or

1 corrections to the minutes as distributed?

2 (No response.)

3 CHAIRMAN GARD: If not, do I hear a  
4 motion to approve?

5 DR. NIEMIEC: So moved.

6 MR. ANDERSON: Second.

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

9 MR. HILLSDON-SMITH: Aye.

10 DR. NIEMIEC: Aye.

11 MR. ANDERSON: Aye.

12 MS. BOYDSTON: Aye.

13 MR. POWDRILL: Aye.

14 MR. CARMICHAEL: Aye.

15 MR. METTLER: Aye.

16 MR. BAUSMAN: Aye.

17 DR. ALEXANDROVICH: Aye.

18 MR. ETZLER: Aye.

19 MR. RULON: Aye.

20 CHAIRMAN GARD: Aye.

21 Opposed, nay.

22 (No response.)

23 CHAIRMAN GARD: The minutes from July

1 the 8th, 2015 are approved.

2 Bruno is going to give the Commissioner's  
3 Report, and congratulations on your new position.

4 MR. PIGOTT: Thank you, Sen. Gard.  
5 I'll try to do the best job I can for the Board  
6 and for the agency.

7 First of all, the big news at our agency  
8 is, since Comm. Tom Easterly retired, we have a  
9 new Commissioner. Her name is Carol Comer. I  
10 know many of you are familiar with her. I'll  
11 just go over briefly her bio for you, just in  
12 case you're not.

13 Ms. Comer served beginning at IDEM as  
14 General Counsel prior to her appointment in  
15 February of this past year as Chief of Staff at  
16 IDEM. She is the Commissioner. She holds her  
17 Master's degree in Environmental Management from  
18 Indiana University's School of Public and  
19 Environmental Affairs, as well as her J.D. from  
20 the Indiana University School of Law at  
21 Indianapolis.

22 She was named Indiana University's first  
23 Environmental Law Fellow in 1995. She has almost

1 a decade of experience in private practice, first  
2 at Plews Shadley in Indianapolis, and later at  
3 Lewis and Roca in Phoenix, representing companies  
4 on environmental and utility matters, insurance  
5 recovery, real estate, and corporate  
6 environmental due diligence, cost recovery, as  
7 well as solid waste, air and water permits  
8 appeals, and a variety of other issues.

9 She also recently served several years as  
10 an administrative law judge presiding over  
11 utility and tax matters. So, Carol's got a  
12 breadth of experience. We're excited to have her  
13 as our Commissioner, and looking forward to  
14 continuing to work with her in her new position  
15 to make sure that she's successful.

16 But -- and as the Chair indicated, I've  
17 taken on the new position of Chief of Staff. I  
18 thought it might be useful to introduce some new  
19 faces -- or not new faces here, but people in new  
20 positions. I -- first of all, I prepared an  
21 organizational chart to hand out to you folks so  
22 that you might have an idea who sits where and  
23 what tasks we perform.

1 The first person I want to introduce is  
2 our General Counsel and our Deputy Chief of  
3 Staff, Don Snemis. Don's sitting here in the  
4 front row and is a terrific addition to IDEM.

5 MR. SNEMIS: Hi.

6 MR. PIGOTT: He has a vast amount of  
7 experience. He has headed the Bureau of Motor  
8 Vehicles, and he's got a great deal of experience  
9 in the private sector and knows our environmental  
10 rules and laws very well, and I'm very excited to  
11 have him on our staff.

12 Martha Clark Mettler is sitting right next  
13 to Don, and Martha is our new Assistant  
14 Commissioner in the Office of Water Quality.

15 Martha, do you want to stand up? I know  
16 people recognize you, but you might as well stand  
17 up.

18 (Ms. Mettler stood.)

19 MR. PIGOTT: Martha has taken over --

20 MS. METTLER: I'm wearing red for the  
21 Fever, everybody.

22 (Laughter.)

23 MR. PIGOTT: Martha takes over my



1 spot as Assistant Commissioner, and in her place  
2 as Deputy Assistant Commissioner is Paul  
3 Higginbotham. Paul is sitting right behind her.  
4 Paul is the person who's directly responsible for  
5 ensuring that our NPDES permits have been issued  
6 on time in real time, and if he thinks he's off  
7 the hook for that, he's sorely mistaken.

8 MR. HIGGINBOTHAM: I'm still  
9 tracking.

10 MR. PIGOTT: Still tracking, Paul.

11 And this org chart reflects the changes in  
12 IDEM, but one person who's not here is Valerie  
13 Tachtiris. Valerie is our Deputy Assistant  
14 Commissioner in the Office of Legal Counsel, and  
15 she has served at IDEM for a number of years and  
16 is very experienced in our air programs, and  
17 we're lucky to have her in that new position as  
18 Deputy Assistant Commissioner as well.

19 Samantha DeWester -- Samantha, are you  
20 here, sitting --

21 MS. DEWESTER: Yes.

22 MR. PIGOTT: -- in the back? Stand  
23 up, Samantha.

1 (Ms. DeWester stood.)

2 MR. PIGOTT: Samantha's our -- head  
3 of our Office of Program Support, and Program  
4 Support encompasses a broad array of activities,  
5 from budget activities to our Off -- what we  
6 called Pollution Prevention in the past, as well  
7 as media and a variety of other things.

8 Samantha comes to us from the City of  
9 Indianapolis, and she is just a gem for us,  
10 because she's really working to organize that  
11 area in a way that is efficient and works for the  
12 whole agency and serves the public. So, thanks,  
13 Samantha. She's our Assistant Commissioner.

14 And then we have our same folks in  
15 positions in the Office of Air Quality. Keith  
16 Baugues, who can't be here because I think he's  
17 up screaming at EPA about some power plant or  
18 something you might be familiar with. But Keith  
19 is still in his position, and we're just very  
20 happy about that, and Bruce Palin is serving as  
21 our Assistant Commissioner in Land Quality. So,  
22 that's a summary of the seats and who's moved  
23 where at IDEM.

1 There's just a couple of other things I

2 wanted to bring to your attention.

3 MS. METTLER: You forgot Roger and  
4 Peggy.

5 MR. PIGOTT: Roger and Peggy, where  
6 are you?

7 Peggy serves as Deputy Commissioner in the  
8 Office of Land Quality and continues in that, and  
9 Roger Letterman is our Deputy Assistant  
10 Commissioner in the Office of Air Quality. Those  
11 two are stalwarts and have served for years in  
12 those positions.

13 Thanks, Martha, for pointing that out.

14 The second thing I wanted to talk about  
15 was the Waters of the U.S. There has been a  
16 discussion at this Board meeting about the Waters  
17 of the United States issue. As you know, the  
18 state is working with the Department of  
19 Agriculture to send -- IDEM and the Department of  
20 Agriculture to send out a letter to U.S. EPA  
21 voicing concerns about this rule and the way it  
22 was put together and the lack of input from the  
23 states.

1 You should know that the Court of Appeals

2 for the Sixth Circuit ordered a nationwide stay  
3 of the U.S. EPA waters rule, pending a  
4 determination of the Court's jurisdiction. And  
5 so, you might ask, "Well, what does that mean for  
6 you on the ground when you're working with these  
7 401 water quality certifications and the 404  
8 program?"

9 For right now, we're continuing to process  
10 those applications, and it's business as usual.  
11 I don't know what's going to change as a result  
12 of this, and we can't wait to see what changes,  
13 so we're continuing to process them. When we get  
14 an application for a 401 certification, we'll  
15 keep processing that. We're -- it is the court  
16 that makes the jurisdictional determination, and  
17 they'll continue doing that.

18 Thus far, whether the rule's been stayed  
19 or in place, we have not noticed a change yet,  
20 and, of course, there's just a lot to be decided  
21 with that rule, not only whether or not it stays  
22 in effect, but if it does, what does that mean?  
23 What is -- how is that going to change

1 determinations? We're still working through  
2 that, but we're not going to stop processing

3 these applications until that's all figured out.

4 This could be some time.

5 So, those are the big things we're working  
6 on, and I'm happy to answer any questions you may  
7 have.

8 CHAIRMAN GARD: Any questions from  
9 members of the Board?

10 (No response.)

11 MR. PIGOTT: Thank you.

12 CHAIRMAN GARD: Thank you so much.

13 Chris Pedersen is going to talk to us in a  
14 minute about rulemaking and information on the  
15 air permitting program.

16 MS. PEDERSEN: I'm Chris Pederson,  
17 with the Rules Development Branch.

18 Before talking about rules, I wanted to  
19 cover just a few administrative things. In your  
20 folder, we have some documents that I just wanted  
21 to mention.

22 Is that not on? Ah, that helps.

23 First, there is an updated list of Board

1 members and contact information, and this  
2 information also is on the Web site, at least

3 some of the information.  
4 Second, we have a list of the reserved  
5 dates and rooms for the 2016 Board meetings.  
6 You'll notice that for April and May we have  
7 rooms other than our normal Conference Room A.  
8 Room 22 is actually in this building, on this  
9 floor, behind the information desk, and Room 1319  
10 is on the 13th floor of the North Building across  
11 the street. If we end up having a Board meeting  
12 on one of those two dates, we'll provide more  
13 information about the exact location.

14 And the rules tracker, as we always put  
15 in, is in there, and then the Above-Ground  
16 Storage Tank Emergency Rule reporting form is  
17 also in there for you to look at when I talk  
18 about that emergency rule in just a few minutes.

19 Currently we have no agenda items that are  
20 likely to be ready for November or December, so I  
21 would anticipate we wouldn't have anything until  
22 maybe January or February for another Board  
23 meeting for rulemakings.

15

1 As far as the rules, I'll just briefly go  
2 over the rules that are most likely to come  
3 before you the soonest. Restrictive Covenants,

4 which is before you today for preliminary  
5 adoption, will probably be ready for final  
6 adoption by the next Board meeting.

7 And also, the Above-Ground Storage Tank  
8 Emergency Rule, if that's adopted today, it's  
9 likely that we'll want to adopt it at least one  
10 more time, and so, at the next meeting we'll  
11 probably bring that before you again.

12 Solid Waste Facility Operator  
13 Certification. For this one, staff is preparing  
14 a response to comments from the second comment  
15 period. This particular rule provides additional  
16 flexibility for training course content and  
17 options for completing courses, it extends the  
18 period of time allowed between operator  
19 recertification, and it clarifies and updates the  
20 rule.

21 Another rule that we've been working on,  
22 Total Coliform Rule. We're working on the second  
23 notice for the regular rulemaking. However,

1 there's a federal deadline for some of the  
2 provisions, which is approaching. It's for  
3 April 1st of 2016. So, at the next Board meeting

4 we would anticipate presenting an emergency rule  
5 to you to adopt those federal changes before the  
6 deadline, as we continue to work on the regular  
7 rulemaking.

8 We're also working on a rule on metals  
9 criteria, and this rule there's proposed  
10 revisions to metal criteria to reflect thorough  
11 updates for the water program. We're working on  
12 the second notice, which is in review, and we're  
13 hoping we'll publish in the Indiana Register  
14 within a couple of months.

15 Another rule that is likely to be coming  
16 up probably in the spring is an emergency rule  
17 for the redesignation of Lake and Porter Counties  
18 to attainment for ozone. Right now we anticipate  
19 that will be in the spring, possibly March or  
20 April, but we have to wait until the Federal  
21 Register publishes the approval of the federal  
22 rule.

23 Are there any questions on the

17

1 rulemakings? I have one other item I wanted to  
2 bring up, but I'll answer any questions about  
3 rulemakings first.

4 CHAIRMAN GARD: Are there any



5 questions for Chris?

6 MR. POWDRILL: Yes.

7 Chris, the Underground Storage Tank

8 Emergency Rule, if we do not have a meeting in

9 January, we will be past 90 days. Is that a

10 problem?

11 MS. PEDERSEN: Well, the deadline is

12 for -- the deadline in the emergency rule is

13 January 1st of 2016, so with this emergency rule,

14 if it's passed, we will have met that deadline,

15 and theoretically, everyone should already be in

16 compliance with it. So, there's a possibility

17 that there would be a gap, but we could still

18 adopt another emergency rule and reinstate it.

19 MR. POWDRILL: Okay.

20 CHAIRMAN GARD: Any other questions

21 for Chris?

22 (No response.)

23 MS. PEDERSEN: Okay. The only other

1 item I wanted to mention, in your Board packet

2 there is an air permitting report. This is

3 something we present each year. This year we

4 were not going to do a verbal presentation of it,

5 but if you have any questions, Matt Stuckey, with  
6 the air program, is here to answer them, so I  
7 wanted to find out if anybody had any questions  
8 for Matt.

9 CHAIRMAN GARD: Does anyone have any  
10 questions?

11 MR. POWDRILL: Just a point. On  
12 page 13 of 16, as the chart indicates, OAQ  
13 consistently met this goal after  
14 September 15th -- or September of 2015. I think  
15 that should be 2014, shouldn't it? The last two  
16 lines of the --

17 MR. STUCKEY: Yeah, that's true.  
18 That should be 2014, so that's reporting back to  
19 last year --

20 MR. POWDRILL: Right.

21 MR. STUCKEY: -- rather than this  
22 year. That's fine. We can correct that.

23 CHAIRMAN GARD: Is that both of them?

19

1 MR. PIGOTT: Both tables.

2 MR. POWDRILL: Both tables.

3 MR. STUCKEY: Okay.

4 CHAIRMAN GARD: Any other questions  
5 or comments?

6 (No response.)

7 CHAIRMAN GARD: Thank you.

8 Today there will be a public hearing prior  
9 to consideration for final adoption of the  
10 Voluntary Performance Based Leadership Program  
11 Rule Amendments. These are presented as three  
12 separate rule documents in the Board packet  
13 because the amendments occur in three separate  
14 titles in the Indiana Administrative Code, and  
15 you all will remember that from the last meeting,  
16 I think.

17 Because the changes proposed are very  
18 similar for each rule, we will open a single  
19 hearing which will cover all three rules. Anyone  
20 wishing to speak on any of the rules or provide  
21 comments pertaining to all of the rules may do so  
22 during that hearing. The Board will then take  
23 three separate Board actions when final adopting

20

1 the rules.

2 There will also be public hearings prior  
3 to consideration of preliminary adoption the new  
4 rule regarding Restrictive Covenants, and rules  
5 that do not expire under IC 13-14-9.5-1.1.

6 In addition, there will be a hearing on,  
7 and the Board will be asked to consider, an  
8 emergency rule adopting a temporary reporting  
9 form as required under Senate Enrolled Act 312  
10 for above ground storage tanks that may impact  
11 public water supplies. A copy of Senate Enrolled  
12 Act 312 is included in the Board packet.

13 Two nonrule policy documents will be  
14 presented to the Board today.

15 There will also be a public hearing on the  
16 Citizen's Petition requesting that the definition  
17 of hazardous air pollutant at 326 IAC 1-2-3-33.5  
18 be amended to include silica dust.

19 And finally, we will have Board discussion  
20 on the Citizen's Petition to amend the definition  
21 of "interference" in the water rules.

22 The rules being considered at today's  
23 meeting were included in Board packets and are

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1 available for public inspection at the Office of  
2 Legal Counsel, 13th Floor, Indiana Government  
3 Center North. The entire Board packet is also  
4 available on IDEM's Web site at least one week  
5 prior to each Board meeting.

6 A written transcript of today's meeting

7 will be made. The transcript and any written  
8 submissions will be open for public inspection at  
9 the Office of Legal Counsel. A copy of the  
10 transcript will be posted on the rules page of  
11 the agency Web site when it becomes available.

12 Will the official reporter for the cause  
13 please stand, raise your right hand, and state  
14 your name?

15 (Reporter sworn.)

16 CHAIRMAN GARD: Thank you.

17 At this point, one comment that I want to  
18 make. You heard reference a couple of times to  
19 Senate Enrolled Act 312. I need more names for  
20 people that are interested in a work group, and  
21 I've gotten very, very little response, just a  
22 couple of names.

23 So, if anyone would like to work on that

22

1 work group to work on a proposed rule, I'd  
2 appreciate you getting me that name pretty --  
3 your names pretty quickly. I do have a document  
4 that Nancy has prepared and will e-mail it to you  
5 outlining all of the things that the Board needs  
6 to consider in the rulemaking that is required by

7 the statute in that bill that was passed last  
8 year.

9 This is a public hearing on adoption of an  
10 emergency rule for reporting form for above  
11 ground storage tanks. This is a public hearing  
12 before the Environmental Rules Board of the State  
13 of Indiana concerning the adoption of an  
14 emergency rule to put a temporary reporting form  
15 in place for above ground storage tanks as  
16 required under Senate Enrolled Act 312, passed in  
17 the 2015 General Assembly. A copy of both the  
18 draft emergency rule and Senate Enrolled Act 312  
19 are included in your Board packet.

20 I will now introduce Exhibit A, the  
21 emergency rule, into the record of the hearing.

22 Is there someone from the Department who  
23 wishes to speak on this?

23

1 MR. PIGOTT: Madam Chair, Chris  
2 Pedersen will --

3 CHAIRMAN GARD: Pardon me?

4 MR. PIGOTT: Chris Pedersen will  
5 speak on behalf of the agency. Just a quick  
6 note, however. Before the Rule Board meeting  
7 this afternoon, the Web site, IDEM's Web site,

8 has an AST link that has revised language, an  
9 interactive map, secondary containment fact  
10 sheet --

11 CHAIRMAN GARD: Uh-huh.

12 MR. PIGOTT: -- a newly revised AST  
13 report, State Form 55906, along with the rest of  
14 the links. So, if anybody's interested, they can  
15 visit our Web site and can get this information.

16 CHAIRMAN GARD: Good. Thank you.  
17 Chris?

18 MS. PEDERSEN: Okay. Much of what  
19 I'm going to say you've already heard, but I'm  
20 going to repeat it. My name is Chris Pedersen,  
21 with the Rules Development Branch.  
22 The Indiana General Assembly passed Senate  
23 Enrolled Act 312 this year concerning the

24

1 reporting of above ground storage tanks, or  
2 AST's, and the minimization of threats to the  
3 drinking water supply.

4 The reporting component of the law is  
5 meant to identify AST's in areas where leaks or  
6 spills could threaten Indiana drinking water  
7 supplies that are not already addressed through

8 another state program.

9 The new law, added to the Indiana Code at  
10 IC 13-18-5.5, became effective on July 1st  
11 of 2015. It directed the Board to adopt rules  
12 requiring the reporting of certain AST's to IDEM  
13 before January 1st of 2016. A regular rulemaking  
14 cannot be completed by that deadline, so the law  
15 also allows the Board to adopt an emergency rule  
16 to create a temporary reporting form for use by  
17 owners and operators of AST's to comply with the  
18 requirement before the deadline.

19 AST's are tanks with a capacity of more  
20 than 660 gallons of liquid with at least ten  
21 percent of the tank above ground.

22 Determining if the AST is a threat to  
23 drinking water supplies is addressed through the

25

1 definition of "critical zone of concern," which  
2 is an area in which a hazardous material could  
3 reach the water intake of a public water system  
4 that uses surface water and could cause a  
5 disruption. These areas cover approximately four  
6 percent of the state and are mostly found in Lake  
7 and Marion Counties.

8 Hazardous materials are determined by a



9 federal definition of hazardous chemicals that  
10 include substances that are physical hazards,  
11 which could be chemicals that are explosive,  
12 flammable, reactive, or corrosive, and also  
13 chemicals that would be considered health  
14 hazards, which could be toxic chemical, chemicals  
15 that can cause irritation to the skin, eyes or  
16 respiratory system, and also carcinogens.

17 The law establishes several exemptions  
18 from reporting. Mostly an AST that is subject to  
19 another law or rule under an existing state  
20 program does not have to be reported. Other  
21 exemptions are included for substances considered  
22 to be a minimal threat to drinking water  
23 supplies.

26

1 To keep information current, the owner or  
2 operator is also required to submit a  
3 supplemental report to IDEM any time there is a  
4 change of the tank location, capacity, contact  
5 information, or the types of materials stored in  
6 the tank.

7 This emergency rule will require the owner  
8 or operator of an AST located in a critical zone

9 of concern that is not otherwise exempted to  
10 report certain information about the AST to IDEM  
11 before January 1st of 2016, and to update that  
12 information if it changes.

13 The reporting form is already on IDEM's  
14 Web site and a link is included in the emergency  
15 rule. Also, a copy of the form that is on the  
16 Web site is in your folder, so you have a copy of  
17 that to look at. An interactive map has also  
18 been developed by IDEM to assist owners and  
19 operators of AST's to determine if their tanks  
20 are located in a critical zone of concern. It is  
21 also on the Web site and linked to the report as  
22 well.

23 If adopted, we plan to file the emergency

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1 rule so it is effective no later than  
2 November 1st. A regular rulemaking will be  
3 initiated to address permanent reporting  
4 requirements and to address other aspects of the  
5 law.

6 IDEM recommends adoption of this emergency  
7 rule to provide the reporting form required to  
8 comply with the new above ground storage tank  
9 law. And I will answer any questions.

10 CHAIRMAN GARD: Are there any  
11 questions for Chris?

12 (No response.)

13 CHAIRMAN GARD: Thank you.

14 Oh, yes.

15 MR. CARMICHAEL: Go ahead.

16 MR. POWDRILL: Chris, I was under the  
17 impression that the purpose of this legislation  
18 was to gather all of the information about all of  
19 the tanks, obviously, that aren't exempted, which  
20 is a long list, but to gather all of that  
21 information in one place.

22 And what we say here is if it's not  
23 reported to some other department, then you have

28

1 to fill out the form, but if you report to some  
2 other department, you don't have to do that. So,  
3 all of the information is not going to be in one  
4 place. Is that -- am I mistaken about my  
5 assumption there?

6 MR. PIGOTT: Chris, do you want me to  
7 answer, or do you want to go ahead?

8 MS. PEDERSEN: Go ahead.

9 MR. PIGOTT: Well, it's my

10 understanding that the legislation requires IDEM  
11 to prepare a report that talks about the  
12 different sources of information or places where  
13 people are reporting already, and I know that  
14 Bruce Palin, in the Office of Land Quality staff,  
15 my esteemed colleague, has been working to  
16 produce this report, which is due, I think,  
17 November 1st.

18 Isn't that correct, Bruce?

19 MR. PALIN: That's right.

20 MR. PIGOTT: So, that's what the  
21 legislation says. It says IDEM shall get this  
22 information, gather it together, "where are we  
23 already reporting? And what are the sources of

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1 information?" And so, that's what Bruce's folks  
2 have been doing, and they're drafting a report,  
3 and that's part of the process's well.

4 So, it is indeed part of 312 to compile  
5 information about it, but what do we already  
6 know? Well, there's this other component that  
7 requires us to do the form, that those people  
8 weren't reporting under other schemes, too, and  
9 that are in the critical zone to report as well.

10 CHAIRMAN GARD: Will that report be

11 put on-line?

12 MR. PIGOTT: It will be. It's  
13 currently in draft form and it's being reviewed.

14 CHAIRMAN GARD: Okay.

15 MR. POWDRILL: So, when Tom's tank  
16 starts leaking and he reports it to, I don't  
17 know, DOE or DOT or somebody, he reports that his  
18 tank is under their -- so, when it starts  
19 leaking, how will you know?

20 MR. PIGOTT: Well, we might not know  
21 whether Tom's tank is leaking. What we will know  
22 are what are the source -- the places that Tom  
23 has to report given his type of tank. Is it --

30

1 does Tom have to submit information about his  
2 tank to the Fire Marshal? Because some people  
3 have to do that.

4 So, what we'll get is a compendium of the  
5 different places where information is already  
6 assembled on these tanks. That's -- that's the  
7 information we'll get.

8 MR. POWDRILL: So, when the first  
9 responders show up, how will they know where the  
10 information is stored, to tell them what's in the

11 tank, how big it is, you know, especially if it's  
12 partially under ground, how big it is, what it's  
13 made of, what's in it? How will they know that  
14 information, or how will they find that  
15 information?

16 MR. PIGOTT: First respond -- I think  
17 the purpose of this legislation was severalfold.  
18 One is to protect drinking water sources; second  
19 is to ensure that we understand what information  
20 is already compiled.

21 So, I don't think this legislation was put  
22 together for the first responders, to ensure that  
23 they know exactly when to get out, but to get a

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1 sense of where are the different sources of  
2 information that already exist, because I believe  
3 that several people who were participating in the  
4 group that discussed this issue said, "Look, we  
5 don't need unnecessary reporting requirements,  
6 and what we don't want to do is double-cover  
7 people if they're already covered."

8 The scenario that you are discussing isn't  
9 part of the -- it's not about the first  
10 responders. It's what do we know in the first  
11 place? We haven't gotten to the first responders

12 part yet, when there's a spill. And when there's  
13 a spill, our first responders, our emergency  
14 responders, will go out if they know about a  
15 spill.

16 They'll deal with the company itself, and  
17 they will -- or the facility that owns it, and  
18 they will interact with them. And I think the  
19 idea behind gathering this information was to  
20 have a better understanding of what we already  
21 know about what's being reported, not -- not  
22 about the first responders, because they'll be  
23 talking to Company XYZ or an organization.

32

1 MR. CARMICHAEL: Isn't it ultimately  
2 the purpose to provide information to our  
3 utilities to develop contingency plans in the  
4 event of --

5 MR. PIGOTT: That certainly is part  
6 of the legislation. Part of the legislation was  
7 that there's an acknowledgement that in  
8 Charleston, South Carolina the incident that  
9 spurred this whole thing and caused their  
10 drinking water facility to shut down -- and there  
11 are two parts to this. One is let's kind of

12 figure out what information we know about tanks  
13 and if we don't know anything, who should report?

14 But the second part, which is every bit as  
15 important, Mr. Carmichael, is the component of a  
16 drinking water facility being prepared in the  
17 event of any kind of incident, whether it's a  
18 tank, whether it's a tanker truck going over a  
19 water body that it has an accident and spills  
20 close to a drinking water intake, that regardless  
21 of the circumstances, these facilities ought to  
22 be prepared to respond.

23 And so, part of the legislation requires

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1 these drinking water systems -- and there are 34  
2 around the state -- to put together a plan of  
3 action, and to be in -- and the thought would be  
4 they'd be in communication with the people who  
5 have tanks in their area, in the event that  
6 that's the case.

7 And Chris discussed the fact that this --  
8 the largest impact for this legislation is  
9 probably Lake and Marion Counties. The drinking  
10 water systems around the state are spread.  
11 There's several smaller ones that likely wouldn't  
12 have tanks in their area because they would draw



13 from a reservoir that's in a heavily wooded area  
14 or something like that.

15 MR. RULON: Well, just different  
16 examples of it, the fact that we report in  
17 fertilizer storage tanks to the State Chemist,  
18 that Bruce is going to pick up that data and try  
19 to consolidate it, that's fantastic if that's how  
20 it works.

21 MR. PIGOTT: Well, that's -- indeed,  
22 that's the point. It's "let's see what we know  
23 out there already, what's being reported, what

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1 does it say, and try to consolidate the  
2 information."

3 MR. CARMICHAEL: As it relates to  
4 this emergency rule, I did have a couple of  
5 questions, or just clarifications that I had. In  
6 reading the statute, it's my understanding  
7 there's really four triggers to report:  
8 Obviously, it has to be an above-ground storage  
9 tank, not exempted, in a critical zone, and  
10 containing a hazardous material.

11 Embedded in sort of those four criteria,  
12 as I read it, in the nonexempt in particular, one

13 is -- introduces the term "de minimis," but  
14 doesn't contain -- let me see if I get my double  
15 negative right -- it doesn't contain a de minimis  
16 amount -- or if it does contain a de minimus  
17 amount, it's exempted. Is there guidance or a  
18 definition at this point of de minimus?

19 MS. PEDERSEN: I assume that's what  
20 the rulemaking will outline.

21 MR. PIGOTT: Well, I don't know that,  
22 but I -- remember, Chris, at the beginning of  
23 your discussion you talked about that reportable

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1 quantities, it's got to maintain a certain size.

2 MS. PEDERSEN: Well, 660 gallons.

3 MR. PIGOTT: Correct.

4 MR. CARMICHAEL: Right.

5 MR. PIGOTT: So, you might think that  
6 that would be -- below that might be considered  
7 de minimus by virtue of what's in the statute  
8 itself, which says, you know, it's got to be a  
9 tank of over 660 gallons.

10 MR. CARMICHAEL: Right, but if you're  
11 over that, if your tank contains one molecule --  
12 this is an absurd example, but if contains one  
13 molecule of a hazardous material, does it require

14 reporting?

15 MS. PEDERSEN: The tank would still  
16 have the capacity to hold the 660 or more, so you  
17 would still be required to report it, because  
18 it's based on the capacity, not the actual  
19 content.

20 MR. CARMICHAEL: So, virtually every  
21 tank over 660 needs to be reported via this  
22 emergency rule?

23 MR. PIGOTT: No, no. Be careful,

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1 because you mentioned the four criteria.

2 MR. CARMICHAEL: Right.

3 MR. PIGOTT: It's -- it's got to be a  
4 critical zone of concern, it's got to be over 660  
5 gallons, it's got to be hazardous, and it's got  
6 to be -- Chris, I'm forgetting that fourth one.

7 MS. PEDERSEN: Well, it wouldn't be  
8 one of the exempted --

9 MR. PIGOTT: And not one of the  
10 exempted --

11 MS. PEDERSEN: Yeah, there's 24 --

12 MR. PIGOTT: I think that narrows  
13 down your field dramatically.

14 MR. CARMICHAEL: I got it. We've got  
15 a lot of tanks, though, in that -- those areas  
16 that don't traditionally contain what we would  
17 consider, or in any other regulatory construct,  
18 contain hazardous material. It's just the  
19 statute is vague. It reads, "contains hazardous  
20 material." For example, if we're cleaning out a  
21 natural gas line, it may contain a small amount  
22 of hydrocarbons, but 99 percent of it's water.  
23 MS. PEDERSEN: The definition, when

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1 it makes reference to hazardous materials, I kind  
2 of researched it back --  
3 MR. CARMICHAEL: Uh-huh.  
4 MS. PEDERSEN: -- and what I  
5 ultimately came up with was definitions in  
6 29 CFR 1910.1200(c), with Appendix A and B, and  
7 using that, you can determine whether or not your  
8 material would be considered hazardous material.  
9 It's quite convoluted how it gets to that,  
10 because there's a definition of "hazardous  
11 materials," it goes then to hazardous chemicals,  
12 and you kind of have to follow the different  
13 references, but -- so, there's actually a very  
14 explicit list --

15 MR. CARMICHAEL: Yeah, and that's --

16 MS. PEDERSEN: -- of criteria to  
17 determine if it meets that.

18 MR. CARMICHAEL: And that's the  
19 material itself. I guess my question is around  
20 the quantity of that material in the tank,  
21 because you could have very little of a material  
22 that is listed, 99.9 percent water and a little  
23 bit of something else. Is the intent for IDEM,

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1 in this first round, to report those tanks, if it  
2 meets all of the other criteria?

3 MR. PIGOTT: Well, I would think it's  
4 the capacity to have this amount in it of the  
5 hazardous stuff itself. Now, I will say it's  
6 important to note that this is kind of a --  
7 you're right. The -- let's say it's the case  
8 that you fill out the form and you send it in.  
9 That's the extent of it.

10 And for companies that are interested in  
11 making sure that they're in compliance with it,  
12 they could be conservative and decide, if it's a  
13 close call, to send in the form. There's no  
14 other requirements. There are no provisions for

15 enforcement. There's no penalty for not  
16 submitting it according to this legislation.  
17 So, one might just overcover themselves if  
18 they believe that they're close to the capacity,  
19 I'm sure, or just barely over.

20 MR. CARMICHAEL: Yeah, that likely  
21 generates thousands more tanks that are  
22 preregistered, if you will, until the Board takes  
23 further action to define this a bit more. But it

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1 sounds like that's the intent.

2 MR. PIGOTT: The statute.

3 MR. CARMICHAEL: And I know you're  
4 between a rock and a hard place, because --

5 MR. PIGOTT: Yes, we're --

6 MR. CARMICHAEL: -- really -- you  
7 really should define that de minimis --

8 MR. PIGOTT: Right.

9 MR. CARMICHAEL: -- yet the emergency  
10 rule has to be put in place by January 1.

11 MR. PIGOTT: And remember, the  
12 emergency rule is just a form.

13 MR. CARMICHAEL: Yeah, but it --

14 MR. PIGOTT: That's all we're doing  
15 is approving a form to be used so that if someone

16 is deciding that they fall under this, that they  
17 can submit something to ensure that they're in  
18 compliance with it.

19 MR. CARMICHAEL: So, right now, the  
20 term "de minimis," is undefined, but what I'm  
21 hearing is folks should be conservative?

22 MR. PIGOTT: Well, I think every  
23 company that faces a question like this will know

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1 best whether or not they feel that they are under  
2 this provision, which is part of the reason that  
3 we put up the materials we put up, and then  
4 they'll make that decision. It's not one that  
5 IDEM is going to tell you, "We know that you have  
6 X number of gallons in your tank."

7 Part of the information-gathering process  
8 here is to understand what's going in, and  
9 there's an acknowledgement that in some places we  
10 don't know what those are, and companies will --  
11 will want to make those decisions.

12 MR. CARMICHAEL: Yeah, but I think  
13 most companies like mine is that we strive in  
14 every way possible to comply. This is a  
15 regulatory obligation on the company, and the

16 more certainty that we can have in terms of what  
17 the expectation is for compliance, the better.  
18 So, that's something that needs to be addressed,  
19 the de minimus.

20 And along a similar line, in the "contains  
21 hazardous material," there's a clause in the  
22 statute that says, "capable of causing a  
23 disruption." Again, I think that's a Board --

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1 probably a Board rulemaking.

2 MR. PIGOTT: Yeah, and I think that  
3 the statute anticipated that there would be  
4 rulemaking associated with that, but -- we'd have  
5 to do rulemaking.

6 MR. CARMICHAEL: But that's virtually  
7 impossible to determine, to say -- and certainly  
8 not defined in an emergency rule as well. So, in  
9 effect, you'll have -- have broad reporting, I  
10 would expect, of lots and lots of tanks, probably  
11 more than what ultimately the final rule will  
12 require.

13 But again, getting back to the original --  
14 one of the intents is to provide that information  
15 that will most advantage the water utilities to  
16 develop a preparedness plan. I don't think they



17 want a big stack. I mean they want to know as  
18 well what could cause that disruption.  
19 MR. PIGOTT: I am -- I don't want to  
20 argue about the de minimus issue that you're  
21 bringing up, Kelly. I think that's a legitimate  
22 question, but I would just say that this  
23 rulemaking is very, very narrowly based on the

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1 norm itself.  
2 MR. CARMICHAEL: Yeah, then again,  
3 this is a broad net. You're going to capture --  
4 assuming companies are conservative like mine,  
5 we're just going to report virtually as well  
6 everything that could potentially fall --  
7 MR. PIGOTT: If it's within a quarter  
8 mile of the banks and up to 25 miles upstream  
9 or -- I think it's five miles inside -- from Lake  
10 Michigan.  
11 MS. PEDERSEN: Yeah.  
12 MR. PIGOTT: I can't remember what  
13 that --  
14 MS. PEDERSEN: Different bodies of  
15 water.  
16 MR. CARMICHAEL: Then one last thing,

17 and I'll let it go, but -- and that is: We also  
18 have tanks, mobile tanks, that we move around  
19 within our service territory, and -- but they can  
20 move within a day, and I'm not exactly sure,  
21 given the structure of this form -- I was looking  
22 for GPS coordinates. I mean do I -- every time  
23 the tank moves, do I have to refile the form?

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1 MR. PIGOTT: I'd have to read through  
2 the statute again, Kelly, to look at the question  
3 of whether or not a mobile tank needs to be  
4 reported or not, to be honest with you. I was  
5 just --

6 MR. CARMICHAEL: Yeah, and just a  
7 solution there, if --

8 MR. RULON: If they're mobile, don't  
9 they have to be registered with DOT anyway?

10 MR. CARMICHAEL: Not all of them. We  
11 have some that aren't. Most are, some are not.  
12 Those that aren't, if we -- you know, if the form  
13 would allow the geographic area that that tank  
14 could potentially be in versus a specific GPS  
15 coordinate, it would be helpful, then we wouldn't  
16 have to file anything.

17 MR. PIGOTT: I'll have to look at the

18 statute --

19 MR. CARMICHAEL: Okay.

20 MR. PIGOTT: -- again --

21 MR. CARMICHAEL: Just a suggestion.

22 MR. PIGOTT: -- or the rule.

23 Absolutely. All of these comments are really

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1 great comments, and I think they're really

2 valuable. Again, I just want to focus -- the

3 real issue for this rulemaking isn't the

4 associated stuff, but the form itself, just to

5 get a form approved so that those people who are

6 intending to comply with the statutory

7 requirements have something to submit to us.

8 MS. PEDERSEN: In the statute, under

9 the exemptions in Section 11, no. 10 references

10 an AST that is regulated by the U.S. Department

11 of Transportation and is located at a particular

12 site for less than 180 days, so I don't know if

13 that would cover the kind of tanks you're

14 referring to.

15 MR. CARMICHAEL: It depends. You

16 know, it can work if "de minimis" is defined

17 right, but if you take it to an extreme of one

18 molecule, it's not always going to be regulated.

19 MS. KING: That's the mobile tanks, I  
20 think, that she's talking about.

21 MS. PEDERSEN: Yeah.

22 MR. HILLSDON-SMITH: Bruno, I think  
23 you had mentioned this before, but when we're in

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1 this gray area between when we --

2 MR. PIGOTT: Yes.

3 MR. HILLSDON-SMITH: -- come back and  
4 define "de minimus" and look at the situation  
5 that was just brought up, what would happen to a  
6 company that was supposed to report under this,  
7 the requirement, but doesn't?

8 MR. PIGOTT: Well, as I indicated,  
9 the statute doesn't provide any enforcement  
10 remedies for the Department. It literally is a  
11 collection-of-information exercise, particularly  
12 focused on those companies that have tanks.

13 And certainly Mr. Carmichael's comments  
14 about wanting to comply fully with any  
15 requirement in the statute totally makes sense to  
16 me, and -- but the agency's primary interest here  
17 is just to understand what tanks we've got.

18 And so, I've not anticipated that we would

19 be collecting this information for enforcement  
20 purposes. Primarily it's to understand the  
21 universe of tanks, to understand their condition,  
22 to help drinking water facilities be in a  
23 position of preparation in the event of some sort

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1 of catastrophic failure.

2 MR. HILLSDON-SMITH: Okay.

3 CHAIRMAN GARD: Gary, do you have  
4 questions?

5 MR. POWDRILL: No, I've made my  
6 comments.

7 CHAIRMAN GARD: Okay.

8 MR. POWDRILL: Thank you.

9 CHAIRMAN GARD: Anyone else have  
10 questions?

11 MS. BOYDSTON: I just want to ask  
12 you: Does the statute require us to notify -- or  
13 to include on the form the number of AST's at a  
14 location? Because I'm just thinking if I have a  
15 number of them, and you don't need to know the  
16 number every time I submit a form, it would be  
17 much more convenient to not have to put the  
18 number of AST's at the location every time I

19 submit a form.

20 MS. PEDERSEN: The form itself  
21 actually has multiple places where you can list  
22 the tanks.

23 MS. BOYDSTON: Right. I'm just

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1 looking at the tank location, where it says  
2 number, unless you're -- it would just be easier  
3 if we didn't have to put the number of AST's.

4 MS. PEDERSEN: Okay. Are you  
5 referring to that rule on which it --

6 MS. BOYDSTON: I'm looking at  
7 Section B.

8 MS. PEDERSEN: In the rule?

9 MS. BOYDSTON: No, on the form.

10 MR. PIGOTT: I think she's looking at  
11 the form.

12 MS. PEDERSEN: Oh, on the form?

13 MS. BOYDSTON: I'm sorry. I've got  
14 to fill out this form by January, and it would  
15 just be -- if this isn't required, it would be  
16 easier to not have to put in the number of  
17 forms -- of AST's at a location, because every  
18 time I submit a form, it's -- I have to count my  
19 tanks, and for a big site, that's -- if I didn't

20 have to count all of my tanks --

21 MS. PEDERSEN: Well, I don't know if  
22 somebody who was putting the form together wants  
23 to respond to that.

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1 MR. PALIN: No.

2 (Laughter.)

3 MR. PALIN: Bruce Palin, Office of  
4 Land Quality. The question is do you have to  
5 include the location multiple times?

6 MS. BOYDSTON: No. On the form,  
7 Bruce, under "Tank location" --

8 MR. PALIN: Okay.

9 MS. BOYDSTON: -- there's also a line  
10 that says, "number of AST's at this location."

11 MR. PALIN: Okay.

12 MS. BOYDSTON: So, if I've sent in a  
13 form that tells you about every tank I have, it's  
14 going to be -- I'm just struggling with the value  
15 of telling you, every time I submit, how many I  
16 have, because that number's going to fluctuate,  
17 and if I've told you all of them, isn't that what  
18 you need to know?

19 MR. PALIN: Well, the form is set up

20 to try and -- for individual tanks, so, again,

21 different sized tanks, you can report --

22 MS. BOYDSTON: Right.

23 MR. PALIN: -- the different sizes.

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1 MS. BOYDSTON: Okay.

2 MR. PALIN: So, are you saying you

3 have multiple tanks that are all the same size

4 and the same location?

5 MS. BOYDSTON: Yeah.

6 MR. PALIN: You put just put down ten

7 tanks and that'll satisfy --

8 MS. BOYDSTON: So, today I may have

9 ten tanks. Next year when I submit this form, I

10 may have 16. I'm saying my number of tanks

11 fluctuates.

12 MR. PALIN: Well, actually this is

13 not an annual form. It's one a one-time --

14 MS. BOYDSTON: One time? That's --

15 MR. PALIN: -- a one-time submittal

16 that --

17 MS. BOYDSTON: That makes it a little

18 better.

19 MR. PALIN: The statute, I believe --

20 the rule says that if you add additional tanks,



21 then you notify --

22 MS. BOYDSTON: Yeah.

23 MR. PALIN: -- that you've added an

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1 additional tank and you give us the information

2 about it.

3 MS. BOYDSTON: So, I'm just saying

4 I'm torn. I'm not sure it adds a whole lot of

5 value to me to have to count them all up, because

6 then I have to remember all of them that I've

7 submitted. It's just for a large site, that's

8 going to be a bit of a hassle if I've told you

9 all of my individual tanks and you have this big

10 collection of the data, and you -- it's just a

11 minor point.

12 The other thing is that was more important

13 to me, I didn't find anywhere where you put a

14 time limit for how quickly you needed to know of

15 any tank changes, so --

16 MS. PEDERSEN: I'm sorry?

17 MR. PIGOTT: Time limit for how

18 quickly they need to report any changes or

19 additions.

20 MS. BOYDSTON: Yeah.

21 MS. PEDERSEN: There's none in the  
22 statute.

23 MR. PIGOTT: So, there's no

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1 requirement or time frame in the statute for  
2 submitting within a certain time period.

3 MS. BOYDSTON: Okay. So, you might  
4 get them sometimes from -- you know, so if we're  
5 going to -- we may wait to submit the form.

6 MR. HILLSDON-SMITH: If at all.

7 MR. ETZLER: Will the agency accept  
8 spreadsheets in lieu of the form to make data  
9 collection simpler for the agency, rather than  
10 filling out this -- I mean fill out the form,  
11 say, "see attached," and have an electronic  
12 spreadsheet that you can use?

13 MR. PALIN: Unless there are  
14 certification statements you have to sign on the  
15 form, and I can't remember if there are or not,  
16 that would be the only thing, that you would have  
17 to -- is there not? Okay. So, yes, I guess  
18 it -- I think the form's not necessarily  
19 required. It's a tool to help make it as easy as  
20 possible for people to submit the information,  
21 but if you have the information in a different

22 form and submit it to us, and it provides all of  
23 the information that's on the form, we would

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1 accept that.

2 MR. ETZLER: Okay. I'm just trying  
3 to make your life simpler, because you've got to  
4 compile all of this, and --

5 MR. PALIN: There's nothing that will  
6 make my life simpler.

7 (Laughter.)

8 MR. ETZLER: I'm just saying if they  
9 can send you Excel spreadsheets with the  
10 information that you can pull them all together  
11 rather than trying to enter all of the data that  
12 comes in, this just might help the process.

13 MR. PALIN: Okay.

14 MR. ETZLER: Thank you.

15 CHAIRMAN GARD: Other questions?

16 DR. ALEXANDROVICH: One last thing.

17 CHAIRMAN GARD: Doctor.

18 DR. ALEXANDROVICH: Is it our policy  
19 to include Web site URL's in the rules? Because  
20 they tend to change. So, this one includes  
21 idem/cleanwater/2369.htm in the rule, which is a

22 different Web site than what's on the form. So,  
23 I don't know. Do we do that?

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1 MS. PEDERSEN: The Web site that's in  
2 the emergency rule is only going to be active  
3 for 90 days before it expires, so it's not a  
4 permanent rulemaking. That particular Web  
5 site -- or that particular link will take you to  
6 a page that will provide a lot of explanation as  
7 well as links directly to the form and the map.

8 On the form, the link -- I'm not sure --  
9 I'm not positive about the one at the top. I  
10 know one of these takes you directly to the map  
11 also, but they're all linked together, so you  
12 should be able to get to anything from these  
13 links.

14 DR. ALEXANDROVICH: How often do we  
15 have URL's within a rule?

16 MS. PEDERSEN: We have done a few.  
17 It's obviously a more recent thing.

18 DR. ALEXANDROVICH: Yeah.

19 MS. PEDERSEN: And we also have in  
20 the past used addresses and phone numbers and had  
21 problems with those, too, so --

22 DR. ALEXANDROVICH: Uh-huh.

23 MS. PEDERSEN: -- we don't do those

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1 too often.

2 CHAIRMAN GARD: Any other questions?

3 (No response.)

4 CHAIRMAN GARD: Okay. Thank you.

5 This hearing is concluded. The Board will now

6 consider adoption of the emergency rule for a

7 reporting form for above ground storage tanks.

8 Is there Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Well, I guess I

11 didn't ask if anybody out there wanted to speak.

12 I'm sorry. We'll back up. Bill? I don't have a

13 sheet from you.

14 DR. BERANEK: No.

15 CHAIRMAN GARD: I don't have a sheet

16 for anybody.

17 DR. BERANEK: My name is Bill

18 Beranek. I'm Chairman of the Marion County Local

19 Emergency Planning Committee. I was not prepared

20 to say anything, but if this is about the form

21 and responding to Kelly's issues, one thing that

22 this rule -- this form goes beyond the law on is

23 when it says all materials stored in each AST.

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1 You're supposed to report all materials stored in  
2 each AST. That's all the law says. The law does  
3 not say you're supposed to give a product name, a  
4 chemical name, a CAS number, and whether it's a  
5 hazardous material.

6 The Local Emergency Planning Committee,  
7 when we ask for information, we do not ask for  
8 all of this information. For some mixture of  
9 stuff, this could be a very long list of very  
10 small concentrations of materials that are  
11 irrelevant to any decision making.

12 What you need to know or the water  
13 utilities need to know is whether there's a  
14 facility that has the capability of having  
15 materials, and then they'll work from there. The  
16 subsequent rulemaking that you're going to go  
17 through will get into the details of hazardous  
18 materials.

19 This one is just to tell you what AST's  
20 are out there. It's not to give chemical names  
21 which maybe even the material safety data sheet  
22 wouldn't have on it. So, this is -- so, I would  
23 suggest just ask them for what material they

1 have, and whatever they tell you, that would be  
2 fine, and work from there if you feel you need to  
3 know more.

4 And just as an aside, the law talks about  
5 an AST is a device. AST is not a tank. It may  
6 be a tank, but it also may be strictly pipes. It  
7 may be outdoors, but it also may be indoors. An  
8 AST is a device. It very specifically does not  
9 define as a tank.

10 So, I've heard the word "tank" used a lot,  
11 which is what most of these things are, but if  
12 there could be some container with piping  
13 indoors, above ground indoors, that meets the  
14 criteria, then that would need to be reported as  
15 well.

16 Thank you.

17 CHAIRMAN GARD: Are there any  
18 questions for Mr. Beranek?

19 (No response.)

20 CHAIRMAN GARD: Thank you.

21 Is there anyone else that would like to  
22 speak?

23 (No response.)

1 CHAIRMAN GARD: Okay. If not, the  
2 hearing is concluded. The Board will now  
3 consider adoption of the emergency rule for a  
4 reporting form for above ground storage tanks.

5 Is there any additional Board discussion?

6 MR. RULON: I would like to hear  
7 Bruce's responses. I mean that point --

8 MR. HILLSDON-SMITH: Yeah.

9 MR. RULON: -- about chemical --

10 CHAIRMAN GARD: Okay.

11 MR. RULON: -- I mean that seems like  
12 a very valid point to me --

13 CHAIRMAN GARD: Uh-huh.

14 MR. RULON: -- if you're going to  
15 have a --

16 CHAIRMAN GARD: Yeah, Bruce, can you  
17 enlighten us on that?

18 MR. PALIN: I think the effort was,  
19 because different people identify different  
20 chemicals different ways, we were trying to  
21 provide all of the different manners in which  
22 that could be reported.

23 So, I understand what Bill was saying, but



1 we may not actually have every -- all of those  
2 pieces of information. And again, I need to  
3 revisit the form to see if it's actually required  
4 to fill in every blank, or if it's just trying  
5 to be one of the indicators or one of the ways to  
6 identify the material that's in there.

7 Some folks may just have numbers and not  
8 have anything else. Some may have the product  
9 number and nothing else. We need some awareness  
10 of what kind of material's in the tanks, and so,  
11 I think we were just trying to provide a variety  
12 of ways that that might be reported. If that  
13 needs to be clarified on the form, we can  
14 certainly do that.

15 MS. BOYDSTON: Yeah. Right now it  
16 says you have to fill out all of the required  
17 information.

18 MR. PALIN: Okay. And I think  
19 because it's a fillable form, what's required is  
20 somehow identified on the Web site itself, so we  
21 can take a look at that.

22 MR. ETZLER: And correct me if I'm  
23 wrong, but the only thing we're adopting is the

1 rule, we are not adopting the form. The form can  
2 be changed as necessary to meet the requirements  
3 if you find you're asking for more than what you  
4 would need.

5 MR. PALIN: We've made every effort  
6 to try to make the form as --

7 MR. ETZLER: I understand that,  
8 Bruce, but I'm just saying from the Board's  
9 perspective, we're adopting the rule. The  
10 form -- the reporting form is something that the  
11 agency is --

12 MR. PALIN: That's correct.

13 MR. ETZLER: -- working on.

14 MR. PALIN: That's correct.

15 DR. BERANEK: You're adopting a  
16 reporting form.

17 MR. CARMICHAEL: To that point,  
18 though, we're reporting the hazardous --

19 MR. ETZLER: Yeah, we know.

20 DR. BERANEK: But you have to do that  
21 if you've got --

22 MR. CARMICHAEL: Which could be very  
23 difficult. I mean if you have a very diluted one

1 percent of general hydrocarbons in water, the  
2 expectation that you list the 40 or 50  
3 hydrocarbons that may be in very clued mixture --

4 MR. PIGOTT: Bruce, I don't think  
5 that was what we were thinking --

6 MR. PALIN: No.

7 MR. PIGOTT: -- when we were devising  
8 this form.

9 MR. CARMICHAEL: Conversely, it could  
10 be very -- the way the form is written, it could  
11 be very confusing, because you don't have  
12 concentration or quantity. You could presume you  
13 have a 660-gallon tank of something, when in fact  
14 it may be .1 percent concentration. So, it  
15 just -- for purposes of, again, moving this to  
16 planning the next steps of what this information  
17 is used for, it could be confusing and  
18 misconstrued.

19 CHAIRMAN GARD: Are there other  
20 questions or comments from the Board?

21 MR. POWDRILL: Madam Chairman?

22 CHAIRMAN GARD: Yes.

23 MR. POWDRILL: I think this

1 discussion has emphasized the need for some  
2 people to belong on that --

3 CHAIRMAN GARD: Absolutely.

4 MR. POWDRILL: -- task force or  
5 committee you're working on.

6 CHAIRMAN GARD: Absolutely. I've  
7 gotten one name that's been --

8 MR. POWDRILL: I think I'm just a --

9 CHAIRMAN GARD: -- passed to me on --

10 MR. POWDRILL: -- little too confused  
11 here.

12 CHAIRMAN GARD: -- this since coming  
13 in. Yeah, and let me make it clear. This will  
14 be an advisory group as provided in the statute  
15 establishing the Environmental Rulemaking Board.  
16 IDEM has the ability to put together work groups  
17 on -- whether they want to put working groups  
18 together on it, but this is -- this is an  
19 advisory group under the rulemaking statute. So,  
20 please get in touch with me so you can get to  
21 work.

22 MR. RULON: Chairman Gard, is it  
23 envisioned that this is just the first step to

1 doing this in every county? Since there are  
2 drinking water sources in every section of land  
3 pretty much, is this just like a trial run, we  
4 get this down, then we're going to -- maybe  
5 that's not in the statute, but is that --

6 MR. PIGOTT: The statute applies to  
7 any tank upstream of a drinking water source. It  
8 does get into the surface water system, and there  
9 are 34 of them around the state, so it's not  
10 limited to Marion and Lake Counties. That's got  
11 to be clear. This statute applies to those tanks  
12 within the critical zone of concern upstream --  
13 what is, 25 miles, and a quarter mile on each  
14 side of the bank of the stream. So, it would  
15 apply in Scott County if there was such a  
16 drinking water intake for surface water purposes.

17 But what we know, given the number of  
18 drinking water/surface water systems around the  
19 state, that the vast majority in fact will be in  
20 Marion County and in Lake County. The rest of  
21 the systems, the 34 systems, are in areas that  
22 it's very improbable that there's more than a  
23 couple of tanks around those areas. So, I need

1 to be clear, it applies statewide, but only in

2 those zones of concern.

3 CHAIRMAN GARD: Any other questions

4 or comments?

5 (No response.)

6 CHAIRMAN GARD: And you can check

7 your e-mail.

8 Nancy, how soon can this be sent out?

9 MS. KING: We'll get that out this

10 week.

11 CHAIRMAN GARD: Okay. And it lists

12 all of the requirements for the rulemaking, that

13 the statute requires, all of the provisions that

14 need to be addressed.

15 MR. CARMICHAEL: I would actually

16 like to suggest that the emergency rule reflect

17 the statute more closely, in particular,

18 Section 9(a) of the statute, where it does not --

19 CHAIRMAN GARD: What page are you on?

20 MR. CARMICHAEL: It's page 5 of the

21 statute. And I think it can be a fairly simple

22 change.

23 CHAIRMAN GARD: We can make

1 amendments to emergency rules right here on the  
2 spot, can't we?

3 MS. KING: Yes. If what you want to  
4 do -- and Mr. Etzler was correct. What we're  
5 actually adopting here is the actual rule  
6 language, and so the language that you have here,  
7 we can change that as long as we have it on the  
8 record of the hearing, and because we do have the  
9 statute in front of us, we can certainly make  
10 sure that that's clear, and then the rule  
11 language will reflect what the Board adopts --

12 CHAIRMAN GARD: Okay.

13 MS. KING: -- and that the form will  
14 be changed to accommodate that as well.

15 CHAIRMAN GARD: Okay.

16 MR. CARMICHAEL: Okay. So,  
17 Section 9, my reading, in particular, around this  
18 chemical and CAS number. Section 9 of the  
19 statute says, "Materials stored in the AST," and  
20 it's my understanding, Bruce, that you're trying  
21 to reflect the statute --

22 MR. PALIN: Yes.

23 MR. CARMICHAEL: -- as best as

1 possible. So, I believe that in the emergency

2 rule itself, under (b)(2) on page 1 of 2, where  
3 it reads, "All materials stored in each AST,  
4 including the following," we can reflect the  
5 statute by striking, "All," and have it read,  
6 "Materials stored in each AST," and then strike,  
7 "including the following," and then strike "(A),  
8 (B), (C), (D)."

9 The purpose of the emergency rule, then,  
10 the reporter would identify the materials in the  
11 AST, but it does not require the reporter to give  
12 the chemical name and CAS number, not that  
13 they're attempting to keep it secret or anything  
14 like that. I just think that there's more work  
15 that has to be done, before -- and if this level  
16 of information is useful and required, as well as  
17 for the reporter to identify if there's a  
18 broad -- a broad number of constituents in the  
19 tank.

20 So, (b)(2) would read, "Materials stored  
21 in each AST," which mirrors Section 9 of the  
22 statute, (a)(2), "Materials stored in the AST."

23 CHAIRMAN GARD: Okay. Is that in the



2 MR. CARMICHAEL: I -- yes.

3 CHAIRMAN GARD: Is there a second to  
4 this motion?

5 MS. BOYDSTON: Second.

6 CHAIRMAN GARD: Okay. Let me ask the  
7 reporter -- court reporter: Do you get that?

8 THE REPORTER: Yes.

9 CHAIRMAN GARD: Okay.

10 Is there discussion on the motion,  
11 Mr. Carmichael's motion?

12 DR. NIEMIEC: I suggest it just be  
13 reread by the reporter for the Board members  
14 before they consider that.

15 CHAIRMAN GARD: Okay.  
16 Can you do that? Can you read that back?

17 MR. CARMICHAEL: Would it be helpful  
18 if I restate the motion?

19 CHAIRMAN GARD: Yes, that's fine.

20 MR. CARMICHAEL: I'll just do that  
21 and you can write it down. So, I move in the  
22 emergency rule before the Board, Section (b)(2)  
23 be amended to read, "Materials stored in each

1 AST," with the word "All" struck, as well as,

2 "including the following, (A), (B), (C) and (D)."

3 MR. POWDRILL: So, you're striking --

4 MR. CARMICHAEL: Strike "All" --

5 MR. POWDRILL: -- (A), (B), (C) and

6 (D)?

7 MR. CARMICHAEL: Yeah.

8 CHAIRMAN GARD: Okay. Has everybody

9 got that? Okay. We have a motion and a second

10 on the floor. All in favor of the amendments to

11 the emergency rule --

12 MR. RULON: Just a question for

13 clarification. Then when we do the normal

14 rulemaking, we can change the formal rule to

15 include some of this material that Kerry just --

16 Kelly just struck --

17 CHAIRMAN GARD: Oh, yes.

18 MR. RULON: -- if we -- thank you.

19 CHAIRMAN GARD: Yes.

20 DR. NIEMIEC: We've all got it.

21 CHAIRMAN GARD: All in favor of

22 the -- of amending the emergency rule with

23 Mr. Carmichael's motion?

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1 MR. HILLSDON-SMITH: Aye.

2 DR. NIEMIEC: Aye.

3 MR. POWDRILL: Aye.  
4 MS. BOYDSTON: Aye.  
5 MR. CARMICHAEL: Aye.  
6 MR. METTLER: Aye.  
7 MR. BAUSMAN: Aye.  
8 DR. ALEXANDROVICH: Aye.  
9 MR. RULON: Aye.  
10 CHAIRMAN GARD: Aye.  
11 Opposed, nay.  
12 MR. ANDERSON: Nay.  
13 MR. ETZLER: Nay.  
14 CHAIRMAN GARD: The ayes have it.  
15 Now we have an amended emergency rule  
16 before us. Is there a motion to adopt the  
17 amended emergency rule?  
18 DR. NIEMIEC: I'd like to just make  
19 one statement first, just related to this. What  
20 can be done, again, if this is what comes up for  
21 the final rulemaking, is to state that this would  
22 be on -- if this is what it needed and, perhaps  
23 parenthetically or otherwise, we'd say, "It would

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1 be helpful if we list these as well," you know,  
2 for example, to assist with identification.  
3 That's something that could be done --

4 CHAIRMAN GARD: Oh, absolutely.

5 DR. NIEMIEC: -- when we look at the  
6 final amendments.

7 CHAIRMAN GARD: Yes.

8 DR. NIEMIEC: Okay. Thanks.

9 CHAIRMAN GARD: Nothing precludes us  
10 from that.

11 Okay. All in favor of adopting the  
12 emergency rules, say aye.

13 MR. HILLSDON-SMITH: Aye.

14 DR. NIEMIEC: Aye.

15 MR. ANDERSON: Aye.

16 MS. BOYDSTON: Aye.

17 MR. POWDRILL: Aye.

18 MR. CARMICHAEL: Aye.

19 MR. METTLER: Aye.

20 MR. BAUSMAN: Aye.

21 DR. ALEXANDROVICH: Aye.

22 MR. ETZLER: Aye.

23 MR. RULON: Aye.

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1 CHAIRMAN GARD: Aye.

2 Opposed, nay.

3 (No response.)

4 CHAIRMAN GARD: Okay. The emergency  
5 rule is adopted.

6 This is a public hearing before the  
7 Environmental Rules Board of the State of Indiana  
8 concerning final adoption of amendments to rules  
9 at 326 IAC 25, 327 IAC 18, and 329 IAC 18,  
10 Voluntary Performance Based Leadership Programs.  
11 These rules are presented as three separate rules  
12 as they are amendments to three separate areas of  
13 the Indiana Administrative Code dealing with air  
14 regulations, water regulations and solid waste  
15 regulations.

16 As the suggested amendments are similar in  
17 nature, we are opening one hearing for all three  
18 rules at this time. Anyone who wishes to address  
19 any of the three rules or speak to an issue that  
20 applies to all three may do so during this  
21 hearing.

22 I will now introduce Exhibits B, C and D,  
23 the proposed rules, into the record of the

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1 hearing.

2 And MaryAnn Stevens is going to present  
3 the rules.

4 MS. STEVENS: Well, are you ready for

5 something noncontroversial? Good afternoon,  
6 members of the Board. I am MaryAnn Stevens, a  
7 rule writer in the Office of Legal Counsel, Rules  
8 Development Branch.

9 At the July Environmental Rules Board  
10 meeting, I presented these three Voluntary  
11 Performance Based Leadership Rule amendments for  
12 preliminary adoption. Today is the hearing to  
13 consider final adoption of the three rulemakings,  
14 one each for the air, water and land programs in  
15 Titles 326, 327 and 329, respectively. This is a  
16 combined hearing for all three rulemakings, and I  
17 am presenting my description of the rules once,  
18 though there will be separate Board actions to  
19 consider final adoption of the three rulemakings.

20 These three rulemakings make amendments to  
21 the Environmental Stewardship Program, what we  
22 call ESP, and Comprehensive Local Environmental  
23 Action Network Community Challenge Program, or

1 the CLEAN program, that were originally adopted  
2 into Titles 326, 327 and 329 in 2007. These  
3 programs are performance-based incentive programs  
4 for companies and communities that not only meet

5 environmental regulatory requirements, but also  
6 voluntarily go beyond those requirements to  
7 provide even greater protection to the  
8 environment and public health.

9 Implementation of those programs by IDEM  
10 in the years since they became available has led  
11 to identification of rule changes that are  
12 intended to update and enhance the programs.  
13 Since the preliminary adoption of these three  
14 rulemakings, the only rule language changes that  
15 have been are minor word adjustments requested by  
16 the Indiana Register editors for clarification.

17 Two of the changes were to change the word  
18 "towards," that ends with "s," to "toward," that  
19 doesn't, and to add "of membership" after the  
20 word "revocation." These changes occur in  
21 Sections 8 and 11 in each of the rules. Because  
22 the preliminarily adopted rules were not  
23 substantially different from the draft rules

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1 posted for comment during the second comment  
2 period, there was no third comment period.

3 As a refresher, I'll run through the rule  
4 revisions that I spoke of at the July Board  
5 meeting and were preliminarily adopted into the

6 rules. Those revisions include updating the ESP  
7 and CLEAN program rules by removing references to  
8 the federal National Environmental Performance  
9 Track program, or NEPT, N E P T.

10 This federal program was a voluntary,  
11 performance-based program that provided  
12 incentives to companies that went above and  
13 beyond standard regulatory requirements. The  
14 federal program was discontinued in May of 2009,  
15 which necessitates removing references to it or  
16 its requirements from the Indiana ESP rules.

17 Other revisions preliminarily adopted into  
18 the rules make changes to the length of  
19 membership and various requirements during the  
20 membership term. The current rule for members in  
21 the CLEAN program requires participants to  
22 identify five continuous environmental  
23 improvement initiatives for the three-year

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1 membership term.

2 Under the revisions, the number of  
3 continuous environmental improvement initiatives  
4 has been reduced to four for the membership term.  
5 The term of membership has been revised from



6 three to four years for both the ESP and CLEAN  
7 programs. The requirement for CLEAN members to  
8 implement an environmental management system, or  
9 EMS, has been eliminated. The EMS requirement  
10 for ESP will remain in effect.

11 IDEM's program staff members who work with  
12 the CLEAN participants have found that the  
13 existing requirement to produce an EMS has  
14 burdened the usual resources of the typical CLEAN  
15 participant and has, therefore, barred some  
16 potential participants. EMS guideline documents  
17 will be made available on the IDEM Web site as a  
18 reference for CLEAN applicants who wish to create  
19 the EMS, but it will no longer be required as a  
20 part of the application process.

21 For members in good standing in either the  
22 ESP or CLEAN program, a new incentive to allow  
23 regulatory flexibility is being added to these

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1 rules. The incentives are where these rules have  
2 differed since their original adoption; however,  
3 the new incentive being added is the same in each  
4 rule. The new incentive will allow members in  
5 good standing in the ESP and CLEAN programs to  
6 request 24 hours' advance notice of the

7 Commissioner's representative arriving to conduct

8 a routine inspection of the member's facilities.

9 If there are any questions, I can try to

10 answer.

11 CHAIRMAN GARD: Are there any

12 questions for MaryAnn?

13 (No response.)

14 CHAIRMAN GARD: Okay. Thank you.

15 There are no speaker cards presented. Is

16 there anybody out there that wants to speak on

17 the rule?

18 (No response.)

19 CHAIRMAN GARD: Okay. The hearing is

20 concluded.

21 There will be three separate votes, one

22 for each rule presented. The Board will now

23 consider final adoption of amendments to the

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1 Voluntary Performance Based Leadership Program

2 Rules at 326 IAC 25, the rules for the air

3 program.

4 Any Board discussion?

5 DR. NIEMIEC: I have one brief

6 question. I understand that the summaries from

7 these entities are available for people to view.

8 Is there also a summary overall of the program

9 prepared by IDEM for people to view as well?

10 MR. PIGOTT: I didn't get that. Can

11 you help me out with this? Is there a

12 program-wide summary?

13 MS. FAUST: Not that's typically

14 shared with the public that will be put on the

15 Web site, but it is shared at the dedication

16 ceremony, and it is put in public notices -- or

17 not public notices -- in press releases when we

18 do announce a new member.

19 DR. NIEMIEC: Thank you.

20 CHAIRMAN GARD: Any other questions

21 from the Board?

22 (No response.)

23 CHAIRMAN GARD: The motion should be

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1 made to adopt IDEM's suggested changes. Is there

2 a motion?

3 MR. ANDERSON: So moved.

4 CHAIRMAN GARD: Is there --

5 MR. POWDRILL: Second.

6 CHAIRMAN GARD: -- a second?

7 MR. ETZLER: Second.

8 CHAIRMAN GARD: All in favor, say  
9 aye.  
10 MR. HILLSDON-SMITH: Aye.  
11 DR. NIEMIEC: Aye.  
12 MR. ANDERSON: Aye.  
13 MS. BOYDSTON: Aye.  
14 MR. POWDRILL: Aye.  
15 MR. CARMICHAEL: Aye.  
16 MR. METTLER: Aye.  
17 MR. BAUSMAN: Aye.  
18 DR. ALEXANDROVICH: Aye.  
19 MR. ETZLER: Aye.  
20 MR. RULON: Aye.  
21 CHAIRMAN GARD: Aye.  
22 Opposed, nay.  
23 (No response.)

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1 CHAIRMAN GARD: The changes are  
2 adopted. We need a motion to adopt the final  
3 rule.  
4 MR. ANDERSON: Move for final  
5 adoption.  
6 CHAIRMAN GARD: Is there a second?  
7 MR. HILLSDON-SMITH: Second.

8 CHAIRMAN GARD: Roll call.  
9 Mr. Rulon?  
10 MR. RULON: Aye.  
11 CHAIRMAN GARD: Dr. Alexandrovich?  
12 DR. ALEXANDROVICH: Yes.  
13 CHAIRMAN GARD: Mr. Carmichael?  
14 MR. CARMICHAEL: Yes.  
15 CHAIRMAN GARD: Mr. Powdrill?  
16 MR. POWDRILL: Yes.  
17 CHAIRMAN GARD: Mr. Anderson?  
18 MR. ANDERSON: Yes.  
19 CHAIRMAN GARD: Mr. Etzler?  
20 MR. ETZLER: Yes.  
21 CHAIRMAN GARD: Mr. Horn?  
22 (No response.)  
23 CHAIRMAN GARD: Mr. Hillsdon-Smith?

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1 MR. HILLSDON-SMITH: Yes.  
2 CHAIRMAN GARD: Mr. Bausman?  
3 MR. BAUSMAN: Yes.  
4 CHAIRMAN GARD: Dr. Niemiec?  
5 DR. NIEMIEC: Yes.  
6 CHAIRMAN GARD: Your name wasn't on  
7 here.  
8 MS. BOYDSTON: It isn't? I can say,

9 "yes," though.

10 CHAIRMAN GARD: Okay. Yes.

11 MR. METTLER: Yes.

12 CHAIRMAN GARD: Okay. And the Chair

13 votes aye. The motion passes, the rule is

14 adopted, twelve to zero.

15 The Board will now consider final adoption

16 of amendments to the Voluntary Performance Based

17 Leadership Program Rules at 327 IAC 18, the rules

18 for the water program.

19 Okay. Board discussion?

20 (No response.)

21 CHAIRMAN GARD: Motion -- I need a

22 motion to adopt IDEM's suggested changes to the

23 rule.

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1 MR. POWDRILL: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. ANDERSON: Second.

4 CHAIRMAN GARD: All in favor of

5 adopting the changes, say aye.

6 MR. HILLSDON-SMITH: Aye.

7 DR. NIEMIEC: Aye.

8 MR. ANDERSON: Aye.

9 MS. BOYDSTON: Aye.  
10 MR. POWDRILL: Aye.  
11 MR. CARMICHAEL: Aye.  
12 MR. METTLER: Aye.  
13 MR. BAUSMAN: Aye.  
14 DR. ALEXANDROVICH: Aye.  
15 MR. ETZLER: Aye.  
16 MR. RULON: Aye.  
17 CHAIRMAN GARD: Aye.  
18 Any opposed, nay.  
19 (No response.)  
20 CHAIRMAN GARD: The changes are  
21 adopted. A motion needs to be made to finally  
22 adopt the rules as -- the rule as amended.  
23 DR. NIEMIEC: So moved.

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1 CHAIRMAN GARD: Second?  
2 MR. METTLER: Second.  
3 CHAIRMAN GARD: Mr. Rulon?  
4 MR. RULON: Yes.  
5 CHAIRMAN GARD: Dr. Alexandrovich?  
6 DR. ALEXANDROVICH: Yes.  
7 CHAIRMAN GARD: Mr. Carmichael?  
8 MR. CARMICHAEL: Yes.  
9 CHAIRMAN GARD: Mr. Powdrill?

10 MR. POWDRILL: Yes.  
11 CHAIRMAN GARD: Mr. Anderson?  
12 MR. ANDERSON: Yes.  
13 CHAIRMAN GARD: Mr. Etzler?  
14 MR. ETZLER: Yes.  
15 CHAIRMAN GARD: Mr. Horn?  
16 (No response.)  
17 CHAIRMAN GARD: Mr. Hillsdon-Smith?  
18 MR. HILLSDON-SMITH: Yes.  
19 CHAIRMAN GARD: Mr. Bausman?  
20 MR. BAUSMAN: Yes.  
21 CHAIRMAN GARD: Dr. Niemiec?  
22 DR. NIEMIEC: Yes.  
23 CHAIRMAN GARD: Ms. Boydston?

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1 MS. BOYDSTON: Yes.  
2 CHAIRMAN GARD: Mr. Mettler?  
3 MR. METTLER: Yes.  
4 CHAIRMAN GARD: And the Chair votes  
5 aye. The motion passes, the rule is adopted,  
6 twelve to zero.  
7 The Board will now consider final adoption  
8 of amendments to the Voluntary Performance Based  
9 Leadership Program Rules at 329 IAC 18, the rules



10 for the solid waste program.

11 Is there board discussion?

12 (No response.)

13 CHAIRMAN GARD: I need a motion to

14 adopt IDEM's suggested changes to the rule.

15 MR. ANDERSON: So moved.

16 CHAIRMAN GARD: Second?

17 DR. NIEMIEC: Second.

18 CHAIRMAN GARD: All in favor, say

19 aye.

20 MR. HILLSDON-SMITH: Aye.

21 DR. NIEMIEC: Aye.

22 MR. ANDERSON: Aye.

23 MS. BOYDSTON: Aye.

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1 MR. POWDRILL: Aye.

2 MR. CARMICHAEL: Aye.

3 MR. METTLER: Aye.

4 MR. BAUSMAN: Aye.

5 DR. ALEXANDROVICH: Aye.

6 MR. ETZLER: Aye.

7 MR. RULON: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed nay?

10 (No response.)

11 CHAIRMAN GARD: The suggested changes  
12 are made. A motion should be made to finally  
13 adopt the rule as amended.

14 MR. CARMICHAEL: So moved.

15 CHAIRMAN GARD: Is there a second?

16 MR. POWDRILL: Second.

17 CHAIRMAN GARD: Roll call.

18 Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Mr. Carmichael?

23 MR. CARMICHAEL: Yes.

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1 CHAIRMAN GARD: Mr. Powdrill?

2 MR. POWDRILL: Yes.

3 CHAIRMAN GARD: Mr. Anderson?

4 MR. ANDERSON: Yes.

5 CHAIRMAN GARD: Mr. Etzler?

6 MR. ETZLER: Yes.

7 CHAIRMAN GARD: Mr. Hillsdon-Smith?

8 MR. HILLSDON-SMITH: Yes.

9 CHAIRMAN GARD: Mr. Bausman?

10 MR. BAUSMAN: Yes.

11 CHAIRMAN GARD: Dr. Niemiec?  
12 DR. NIEMIEC: Yes.  
13 CHAIRMAN GARD: Ms. Boydston?  
14 MS. BOYDSTON: Yes.  
15 CHAIRMAN GARD: Mr. Mettler?  
16 MR. METTLER: Yes.  
17 CHAIRMAN GARD: And the Chair votes  
18 aye. The rule is adopted, twelve to zero.  
19 This is a public hearing before the  
20 Environmental Rules Board of the State of Indiana  
21 concerning preliminary adoption of new rules at  
22 329 IAC 1 and 2 [sic] concerning Restrictive  
23 Covenants.

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1 I will now introduce Exhibit E, the draft  
2 rules, into the record of the hearing.  
3 Lauren Aguilar is going to speak on the  
4 rule.  
5 MS. AGUILAR: Good afternoon,  
6 Chairwoman Gard, members of the Board.  
7 The Department is proposing amendments to  
8 329 IAC 1 to add new rules describing the process  
9 for requesting a modification of a restrictive  
10 covenant and allow for cost recovery measures.  
11 Indiana statute authorizes an owner of a

12 property with a restrictive covenant to request a  
13 modification from the Department if there has  
14 been a change in conditions or an advancement in  
15 science or technology that would allow for such a  
16 modification. The proposed modification of the  
17 conditions and restrictions may not increase the  
18 potential hazards to human health or the  
19 environment.

20 The costs associated with reviewing a  
21 modification request include administrative and  
22 personnel expenses. The Department proposes to  
23 base these cost recovery measures for personnel

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1 expenses on hours worked and administrative  
2 expenses on actual costs.

3 Modifying a restrictive covenant will  
4 benefit the landowner who can potentially  
5 increase the value of the property while the  
6 Department can ensure that human health and the  
7 environment are still protected. Reimbursement  
8 of costs to the Department will allow the  
9 Department to properly review the modification  
10 requests while maintaining a high level of  
11 customer service.

12 The Department did not receive any  
13 comments during the first and second comment  
14 period, and the Department respectfully requests  
15 the Board preliminarily adopt the rules as  
16 presented. Program staff is available should you  
17 have any questions.

18 CHAIRMAN GARD: Are there any  
19 questions for Lauren?

20 DR. ALEXANDROVICH: Yes, I do.

21 So, there have been no requests to change  
22 the restrictive covenants so far; is that --

23 MS. AGUILAR: Well, we do get -- we

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1 do get modification requests in currently. There  
2 just aren't any cost recovery measures in place,  
3 so program staff still do review these and  
4 approve if they are able to.

5 DR. ALEXANDROVICH: Do you know the  
6 approximate number you might have per year and  
7 the cost of those?

8 MS. AGUILAR: I think currently now I  
9 could ask program staffers for some information.  
10 We're running about what, 20 per year?

11 MR. OERTEL: Twenty per year.

12 MS. AGUILAR: Twenty per year, and I

13 think it's taking them about fifteen hours to

14 review them.

15 MR. OERTEL: On average.

16 MS. AGUILAR: On average. There is a

17 wide range, depending on what remediation was

18 necessary to approve and warrant such a

19 restrictive covenant on the property. So, when

20 we say it's approximately taking 15 hours, it

21 could take three, it could take 40. It just kind

22 of depends on what happened that initially caused

23 this restrictive covenant to be placed on the

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1 land. But we're just trying to give everyone

2 some averages, just so, you know, for argument's

3 sake, you can see it on paper what it's taking.

4 MS. BOYDSTON: Have you considered

5 just a flat fee that would -- would be -- or a

6 cap? I mean are you considering -- and I haven't

7 gone through this exercise myself, but if I'm

8 submitting an application and I have no idea what

9 my cost is going to be when you're done, that

10 seems like it could be painful if I'm a small

11 business owner. So, wouldn't it be appropriate

12 to have a cap or some discussion up front on what

13 that fee would be, so that someone isn't taken by  
14 surprise at the end?  
15 MS. AGUILAR: You know what? That is  
16 a great point, and that is something that we can  
17 go back with program and discuss the possibility  
18 of, and I can report back when we come back for  
19 final adoption what we figured out. If we need  
20 to contact some outside sources and kind of see  
21 what they're feeling, then we can -- I can  
22 present that information as well. That wasn't  
23 something they really contemplated when the

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1 statute was passed, so we didn't really consider  
2 that, but that is a good point.

3 MS. BOYDSTON: Okay. Thank you.

4 MR. RULON: I'm not sure that caps is  
5 a good idea.

6 MS. BOYDSTON: Pardon me?

7 MR. RULON: I'm not sure caps is a  
8 very good idea.

9 MS. BOYDSTON: And I don't know what  
10 the right solution is, but I don't like an  
11 open-ended cost.

12 MR. RULON: I agree with that. There  
13 should be some way to tell people in advance, an

14 estimate or something. I just don't want Kelly

15 to pay as much as I have to pay.

16 (Laughter.)

17 MR. CARMICHAEL: I appreciate that.

18 MR. RULON: I'm there for you.

19 DR. ALEXANDROVICH: So, I want to --

20 when say a cap is not necessarily a good idea, so

21 would a -- just a flat fee be a better idea?

22 MR. RULON: Well, I'd like to have

23 their input on this, or just communicate with the

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1 applicant in advance, "This is going to cost this

2 much, based on --" you know, if we want to get a

3 sanitary landfill recertified for some reason,

4 that it's got coal tar and stuff in it from a

5 power plant, that shouldn't be a hundred dollars,

6 as compared to what Gail was envisioning, to get

7 one small corner of a one-acre parcel that has a

8 spill on it.

9 So, I think there's probably a way for

10 them -- I guess the feedback for them from all of

11 us would be there needs to be some way for people

12 to know in advance what the fee's going to be.

13 MR. PIGOTT: I think that point is



14 well taken in terms of there could be a wide  
15 range of situations which might make a cap more  
16 difficult, but we'll look into all of it and  
17 we'll look into what is the range of costs, what  
18 is the likelihood that we're going to have a  
19 project that would cost a great deal, and what  
20 makes sense in terms of our costs that we incur?

21 It's a balancing act. You want to make  
22 sure that it doesn't break the bank; you want to  
23 make sure that the customers understand what the

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1 costs will be. And that part, I don't know  
2 whether we could build in some sort of estimate,  
3 just as we do when we go to the auto mechanic.

4 MR. RULON: Thank you.

5 CHAIRMAN GARD: Okay.

6 MS. AGUILAR: And I would like to  
7 read to you from the statute, just so -- we will  
8 go back and discuss this. It's a very valid  
9 concern. But just so you understand what our  
10 concerns are with authorizing legislation, it  
11 says, "The Board shall adopt rules --" and there  
12 is a statute for your authority to do so,  
13 "-- providing for the recovery of administrative  
14 and personnel expenses incurred by the state in

15 evaluating proposed modifications of restrictive  
16 covenants."

17 So, the statute's already contemplating  
18 that we're going to get costs based on whatever  
19 hours we spend reviewing these. Now, that  
20 doesn't mean that we can't sit down and try to  
21 come up with some type of way to give the  
22 requester some idea of what this might entail.

23 Now, I will say that even talking with

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1 program, most of these, as they come in, they  
2 kind of understand what's going to be involved  
3 with this as they're submitting the requests.  
4 So, we just review the materials that they submit  
5 to us.

6 And so, they already know what it took to  
7 compile these materials, and the more thorough  
8 that they can be when they are providing us these  
9 bits of information, the quicker it should be for  
10 us to review them and make sure that it's okay to  
11 go ahead and allow the modification.

12 Now, IDEM's not out inventing the wheel.  
13 We're not out gathering the information for them,  
14 so we're going to -- if something's incomplete,

15 we're going to contact them and say, "Hey, we  
16 need some more information that would better  
17 allow us to decide whether or not this  
18 modification is allowed to go through."

19 So, as much as possible, IDEM is trying to  
20 keep costs low. We're not going to send people  
21 out to gather samples and take tests and spend  
22 days in the lab, kind of racking up costs for  
23 them.

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1 MR. PIGOTT: Yeah, we're not --

2 MS. BOYDSTON: And I think we  
3 understand that. It's just not -- there --

4 MS. AGUILAR: Sure.

5 MS. BOYDSTON: -- should be a limit  
6 to pay.

7 MR. PIGOTT: Understood, and we'll  
8 look at the --

9 MS. AGUILAR: Yeah, we'll definitely  
10 look at that, and we can talk about that before  
11 final adoption.

12 CHAIRMAN GARD: Other questions or  
13 comments?

14 MR. POWDRILL: Is there -- you  
15 require that the recorder record each of these,

16 the county recorder record each of these, so  
17 should they not get paid as well?  
18 MS. AGUILAR: That -- I mean that is  
19 something that I guess the legislature would have  
20 to have address. Now, county recorders are  
21 already required, as a regular due course of  
22 business, to record anything that's attached to  
23 the land, any type of covenant.

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1 So, yes, I guess we are putting a little  
2 bit of extra work on them. If you approve a  
3 modification, they would have to take that in and  
4 get it recorded, but that is something that  
5 they're already doing in the course of their  
6 business as being a county recorder.

7 MR. POWDRILL: I would think that  
8 that's probably already part of your business as  
9 well.

10 MS. AGUILAR: That is true, but the  
11 statute's here, so we're just requesting that we  
12 get cost recovery measures.

13 CHAIRMAN GARD: Any other questions?

14 (No response.)

15 CHAIRMAN GARD: Thank you.

16 (Discussion off the record.)

17 CHAIRMAN GARD: Okay. I have one  
18 sign-up card, Tom Barnett.

19 MR. BARNETT: Good afternoon. Tom  
20 Barnett. I'm the Manager of Environmental  
21 Technology for ArcelorMittal Indiana Harbor, East  
22 Chicago, Indiana.

23 Let me start by saying we're not opposed

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1 to this in any way, but, of course, business  
2 always worries about anything that might be open  
3 ended and what -- you know, exactly your  
4 concerns -- what will this cost in each  
5 particular instance.

6 I'd just like to suggest that we do have  
7 experience in other states. For example, in  
8 Illinois, where we worked with cleaning up sites  
9 and getting no-further-action letters from the  
10 facil -- from the state, and as I remember, in  
11 Illinois it's pretty prescribed exactly what it's  
12 going to cost, what people are paid per hour,  
13 and, you know, a record every week of -- or every  
14 month at least -- of what the charges are  
15 amounting to.

16 And I would suggest that it may be useful

17 for IDEM to look at some of the other states'  
18 examples and come up with something based on  
19 what's already out there, and it might even be  
20 useful to have some kind of small work group on  
21 this, to work through what would be reasonable in  
22 this particular case.  
23 Any questions?

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1 CHAIRMAN GARD: Any questions?  
2 (No response.)  
3 CHAIRMAN GARD: None. Thank you.  
4 MR. BARNETT: Okay. Thank you.  
5 CHAIRMAN GARD: Is there anyone else  
6 that wishes to speak on this?  
7 (No response.)  
8 CHAIRMAN GARD: If not, this hearing  
9 is concluded.  
10 The Board will now consider preliminary  
11 adoption of new rules at 329 IAC 2-1 concerning  
12 Restrictive Covenants. Is there any additional  
13 Board discussion?  
14 DR. NIEMIEC: Just to summarize what  
15 we've discussed so far, it sounds like IDEM,  
16 prior to our next meeting, will look at ways

17 either to have some ranges or preliminary  
18 estimates or react to reporting of costs, so that  
19 there's not a big surprise with the final bill  
20 that's not really acceptable, and in the  
21 meantime, even though we preliminarily adopt,  
22 we'll consider what information comes from that  
23 and whether or not a work group is involved.

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1 MR. PIGOTT: Yes, we're going to do  
2 that. Thank you.

3 DR. NIEMIEC: All right. Thanks.

4 MR. POWDRILL: Why don't we wait to  
5 preliminarily adopt it until after we have that  
6 information?

7 (Discussion off the record.)

8 CHAIRMAN GARD: Unless we have  
9 preliminarily adopted this, they don't have an  
10 official document to offer an amendment to. But  
11 it's up to the Board. So, is there a motion to  
12 preliminary -- preliminarily adopt the rule?

13 MR. ETZLER: So moved.

14 CHAIRMAN GARD: Is there a second?

15 MR. ANDERSON: Second.

16 CHAIRMAN GARD: All in favor of  
17 preliminarily adopting the rule, say aye.

18 MR. HILLSDON-SMITH: Aye.  
19 DR. NIEMIEC: Aye.  
20 MR. ANDERSON: Aye.  
21 MS. BOYDSTON: Aye.  
22 MR. CARMICHAEL: Aye.  
23 MR. METTLER: Aye.

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1 MR. BAUSMAN: Aye.  
2 MR. ETZLER: Aye.  
3 MR. RULON: Aye.  
4 CHAIRMAN GARD: Aye.  
5 Opposed, nay.  
6 MR. POWDRILL: No.  
7 DR. ALEXANDROVICH: Nay.  
8 CHAIRMAN GARD: The ayes have it.  
9 There is a preliminary -- the rule has been  
10 preliminarily adopted, and I take it we can  
11 expect probably a work group and an amended rule  
12 to consider for final adoption at some future  
13 meeting.  
14 This is a public hearing before the  
15 Environmental Rules Board for rules not subject  
16 to the sunset provision of IC 13-14-9.5. In  
17 accordance with the statute, rules that are



18 exempt from the expiration under the law and have  
19 been effective for seven years should be the  
20 subject of a public hearing and speakers comment  
21 on any interested rules in a public hearing  
22 before the Board. A notice for each effective  
23 title of the Indiana Administrative Code,

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1 Titles 326 and 327, was published in the Indiana  
2 Register with a request for written comments on  
3 whether any of the listed rules should be  
4 reviewed and under the regular rulemaking process  
5 at IC 13-14-9.

6 I will now introduce Exhibit F and G, the  
7 two notices published in the Indiana Register,  
8 into the record of the hearing.

9 No written comments were received for any  
10 of the rules listed in the notices. Is there  
11 anyone who wishes to provide comment to the Board  
12 on any of these rules at this time?

13 (No response.)

14 CHAIRMAN GARD: Okay. This hearing  
15 is concluded.

16 The Board must determine whether, based on  
17 comments received, they would like to direct the  
18 agency to open a new rulemaking for any of the

19 rules listed as being exempt from the sunset  
20 process. If the Board chooses not to ask for a  
21 rulemaking, a motion should be made that no  
22 further action be taken on the rules. If you  
23 have any questions on the nonsunset process,

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1 Nancy King is available to answer any questions.

2 Is there Board discussion?

3 MR. POWDRILL: Just a question.

4 CHAIRMAN GARD: Yes.

5 MR. POWDRILL: On the air information  
6 sheet, the LSA document that's deemed 284, the  
7 summary response to comments from the comment  
8 period, it says, "Title 326 Water Pollution  
9 Control Initiative." It probably should say,  
10 "Air Pollution Control." I don't know if that's  
11 an official part of the document or not, but --

12 MR. PIGOTT: We can certainly make  
13 that change.

14 MR. POWDRILL: Okay. It should say,  
15 "Air."

16 MS. BOYDSTON: Yes. Bernie -- or  
17 Bruno?

18 MR. PIGOTT: Yes.

19 MS. BOYDSTON: I'm sorry. I think  
20 the e-mail packet might have been incorrect.

21 MR. PIGOTT: Okay. We'll  
22 double-check and correct it if it's not already.

23 CHAIRMAN GARD: Okay. Any other

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1 questions or discussion?

2 (No response.)

3 CHAIRMAN GARD: Is there a motion for  
4 no further action on the rules?

5 MR. POWDRILL: So moved.

6 CHAIRMAN GARD: Is there a second?

7 MR. ANDERSON: Second.

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

10 MR. HILLSDON-SMITH: Aye.

11 DR. NIEMIEC: Aye.

12 MR. ANDERSON: Aye.

13 MS. BOYDSTON: Aye.

14 MR. POWDRILL: Aye.

15 MR. CARMICHAEL: Aye.

16 MR. METTLER: Aye.

17 MR. BAUSMAN: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MR. ETZLER: Aye.

20 MR. RULON: Aye.

21 CHAIRMAN GARD: Aye.

22 Opposed, nay.

23 (No response.)

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1 CHAIRMAN GARD: Motion passes.

2 Today we have a presentation on two  
3 nonrule policy documents, and they were sent to  
4 you as a supplement to replace what was in the  
5 packet originally: Applicability of RCRA  
6 Corrective Action Laws to Current Owners of  
7 Hazardous Waste Disposal Sites, and Procedures  
8 for Gaining Access to Third-Party Properties by  
9 Participants Performing Investigation or  
10 Remediation.

11 IDEM's General Counsel, Don -- I can't  
12 pronounce your last name.

13 MR. SNEMIS: Snemis.

14 CHAIRMAN GARD: Snemis -- will  
15 present the policies.

16 MR. SNEMIS: Good afternoon, Madam  
17 Chairwoman and members of the Board. My name is  
18 Don Snemis, and I am General Counsel and Deputy  
19 Chief of Staff, Indiana Department of

20 Environmental Management. I speak today to  
21 present to you two new nonrule policy documents.  
22 First I would like to take up the document  
23 entitled, "Applicability of RCRA Corrective

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1 Action Laws to Current Owners of Hazardous Waste  
2 Disposal Sites." It's Policy No. MP-008-NPD.  
3 The essential purpose of this document is  
4 to clarify the agency's interpretation of Indiana  
5 laws with regard to whether owners of former  
6 hazardous waste facilities who did not  
7 participate in the operation of the facilities,  
8 did not seek or receive a permit, and were not  
9 required to seek or receive a permit are liable  
10 under state RCRA laws. An overview of the NPD is  
11 that IDEM believes that it has no authority under  
12 Indiana law to order such owners to take  
13 corrective actions.

14 The important points to keep in mind on  
15 this NPD is that this doesn't limit the  
16 obligations of current owners of hazardous waste  
17 facilities that are not related to corrective  
18 actions, such as the obligation to provide site  
19 access to those who may have that responsibility,  
20 to cooperate with responsible parties, and to

21 exercise due care to avoid causing or  
22 exacerbating releases of hazardous wastes. It  
23 doesn't limit or affect IDEM's ability to pursue

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1 those current owners under other legal schemes,  
2 such as CERCLA.

3 This interpretation is consistent with a  
4 recent state court decision from New York  
5 interpreting substantially the same types of  
6 state laws. We believe that this interpretation  
7 is consistent with the text of Indiana statutes  
8 on the topic.

9 Essentially the RCRA statutes are a  
10 permit-based system, and they apply to permit  
11 holders and those who either did or should have  
12 obtained permits, and thus, the interpretation  
13 stems from that underlying understanding.

14 A couple -- there have been a couple of  
15 changes I want to point out from the original  
16 version that was provided to you, and those  
17 changes were based largely on ideas we received  
18 through comment.

19 If you will direct yourselves to the last  
20 line of Section 2.0, which is "Scope," we have

21 added the following statement: "This NPD does  
22 not purport to affect or impact EPA's authority  
23 to interpret and implement federal statutes and

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1 regulations in any manner." That was added at  
2 the request of EPA to clarify that we weren't  
3 seeking to bind them and that this policy  
4 wouldn't somehow mislead people into thinking  
5 that this was an EPA guidance rather than an IDEM  
6 guidance.

7 If you will direct yourselves to  
8 Section 4.7, we have added a definition of  
9 "Owner," which did not exist in the first draft,  
10 and we have clarified that "owner" would include  
11 an owner's lessee, tenant, or its contractors,  
12 and that was in response to comments we received  
13 from industry indicating that this shouldn't be  
14 limited to people who are actually owners of  
15 properties, but rather, others on the site as  
16 well.

17 And finally, we added Section 6.4, which  
18 was also suggested by EPA, and it states that  
19 "Nothing in this NPD will be interpreted to  
20 render Indiana law pertaining to RCRA permits or  
21 RCRA obligations less stringent than federal RCRA

22 laws and regulations." I believe that was the  
23 case before we added this, but EPA asked that we

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1 specify it, and that's certainly fine with us.

2 So, those were the three changes that were made.

3 There were some comments made that we did  
4 not adopt. One commenter asked that we place the  
5 decision making authority in this regard with  
6 Office of Legal Counsel rather than the Office of  
7 Land Quality.

8 We disagreed with that suggestion. We  
9 believe that the best approach is the approach  
10 taken on virtually all of these types of  
11 questions, which is that the program is  
12 responsible for making the decision but has full  
13 access to the Office of Legal Counsel to seek  
14 advice and counsel, which is its function. We  
15 don't run the programs, we provide advice and  
16 counsel, and we'd like to stay in that role.

17 One other commenter asked us to extend the  
18 concept to owners and, quote, operators. We  
19 actually added an expanded definition of owner in  
20 lieu of making that change. We thought extending  
21 this to operators would imply an operator of a



22 facility, and, of course, liability would have  
23 attached to a permitted operator, so we simply

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1 felt that that was the wrong terminology to use.  
2 The concept was reasonable, and that's why we  
3 made the change to expand the definition of  
4 "owner."

5 That is all I've prepared. I'm happy to  
6 answer any questions that you may have.

7 CHAIRMAN GARD: Are there any  
8 questions?

9 (No response.)

10 CHAIRMAN GARD: Thank you.

11 MR. SNEMIS: Moving on to the second  
12 NPD, it is entitled, "Procedures for Gaining  
13 Access to Third-Party Properties by Participants  
14 Performing Investigation or Remediation," and you  
15 will note, I believe, that that is a revised  
16 title as well, which is sort of a prelude to some  
17 changes we made to the revised version.

18 The essential purpose of this NPD is to  
19 provide some guidance and clarity to responsible  
20 parties and program participants who are  
21 attempting to gain site access to sites owned by  
22 third parties for the purpose of conducting

1 This policy sets out the steps that we  
2 have determined are appropriate for gaining  
3 access to those sites. Making a legitimate  
4 attempt to gain access to a site but being unable  
5 to do so is a factor that IDEM considers in  
6 utilizing its enforcement discretion.

7 Having an NPD that standardizes the  
8 recommended steps for gaining access, we believe,  
9 will provide clarity to those attempting to do  
10 it, some advice and guidance to those attempting  
11 to gain access, and some consistency in the way  
12 that those expectations are made and represented  
13 across the program.

14 A couple of points about the changes,  
15 originally the concept of an investigation was  
16 merged with the concept of remediation in the  
17 first draft, and we had several comments point  
18 out that it might be better to separate those two  
19 things, and we have done so.

20 Often investigations are conducted before  
21 the identity of the responsible party is  
22 determined, and by having them combined, we sort

23 of implied that anyone trying to gain access was

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1 already determined to be a responsible party, so  
2 we felt those comments were reasonable.

3 And now there is not only incorporation of  
4 a new definition of "Investigation" under  
5 Rule 4.5, we have now, instead of calling the  
6 party "responsible party," we refer to them as  
7 simply a "participant," which is a more neutral  
8 term. It doesn't especially invoke  
9 responsibility or liability.

10 We've also, at the suggestion of a  
11 commentator, revised the definition of  
12 "Remediation" in the document, to bring it more  
13 closely aligned with concepts found in the  
14 remediation closure guide glossary.

15 Several of the commenters stated that they  
16 thought these steps that were set forth in 6.3 as  
17 to how you contact people and what methods you  
18 use to contact people were a little rigid, which  
19 we thought was a reasonable observation, so in  
20 the last line of 6.3, we added a sentence that  
21 reads, "Performing Steps 3 to 6 in a different  
22 order does not require approval from the "Project  
23 Manager."

1 In other words, you don't have to go in  
2 this order necessarily, but it is important that  
3 we see that all of these things were tried before  
4 we will agree that basically you've done  
5 everything reasonable to gain site access.

6 We also added a line to 6.3 vii. b., which  
7 is on page 7, that explicitly states that  
8 participants may redact confidential information  
9 in any agreements that they submit to IDEM, or  
10 they can choose to make a claim of  
11 confidentiality under the appropriate  
12 confidentiality rule.

13 That was in response to comments that  
14 sometimes perhaps amounts paid for access or  
15 other information in the site access agreement  
16 could constitute legitimately confidential  
17 information, and we wanted to be flexible enough  
18 to give people the opportunity to redact that if  
19 they so desire.

20 There were a lot of comments -- well,  
21 there were several comments made that were not  
22 adopted. You have them all in your pocket. I'm  
23 happy to go through them.

1       There was several comments that revolved  
2 around the idea that we needed to state  
3 specifically that IDEM will or will not grant  
4 closure if certain steps are taken. In other  
5 words, put it in black and white that if you do  
6 this and we can't get access, then closure will  
7 be granted.

8       We disagreed with that. We think that's a  
9 site-by-site, case-by-case analysis that's really  
10 dependent on what happened in a particular  
11 situation. We believe the agency needs the  
12 flexibility and the discretion to make that  
13 decision on a case-by-case basis, and not in an  
14 NPD such as this.

15       There was a suggestion that someone -- and  
16 I'm not going to go through every detail unless  
17 you'd like me to. There was a suggestion that I  
18 thought was interesting, that we consider e-mails  
19 and faxes sufficient notice. I guess I could  
20 understand that perspective, but it wasn't  
21 incorporated into the rule.

22       I think if you can successfully e-mail or  
23 fax someone, you can give them a quick call to

1 make sure that you're talking to the actual  
2 person and that you know who you're talking to.  
3 Sometimes when you're talking through an e-mail  
4 or through a fax machine, how do you really know  
5 it's the right person on the other end? So, I  
6 thought it was a reasonable suggestion, but in  
7 the end, we didn't choose to incorporate it.

8       There was a suggestion that documentation  
9 of the attempt not be needed to be submitted if  
10 an access agreement is reached. On its face, a  
11 reasonable suggestion, but if you sort of look  
12 behind it, then you realize that we do have  
13 situations where owners breach agreements, owners  
14 renege on agreements, and so having that full  
15 record of what attempts were made is useful to  
16 the agency, so we would like to continue with  
17 that.

18       There were some suggestions that IDEM play  
19 a greater role in helping parties obtain access.  
20 We would certainly consider that, I think, on a  
21 case-by-case basis, but to give us that  
22 broad-based duty, we simply don't have the  
23 manpower to do that, and I think it's fair to put

1 the onus on the investigator, on the  
2 responsibility party, to take all of the steps  
3 necessary to do that.

4 There were several comments about the  
5 template we provided, the sample that we  
6 provided. There's no way that we're going to be  
7 able to take all of that into consideration.

8 It's merely a template, it's merely a sample.

9 6.2 of the policy actually contains the  
10 information that we would like to see in the  
11 temp -- in the actual agreement, and 6.2 even  
12 provides that this information can be included  
13 either in the access agreement or in the  
14 supplemental information provided.

15 So, we didn't think it made a lot of sense  
16 to work real hard on trying to satisfy everybody  
17 in a template. People can write their own access  
18 agreements, and I think there's going to be a  
19 broad -- a broad band of access agreements that  
20 are going to be acceptable as long as they  
21 contain that basic information.

22 That's all I had prepared for these.

23 Again, as with the last, I'm happy to answer any

1 questions that you might have.

2 CHAIRMAN GARD: Are there any  
3 questions or discussion from the Board?

4 Yes, Gary.

5 MR. POWDRILL: And Mr. Snemis, in  
6 Section 6.4 ii., which is on page 8, on the  
7 second line, it says, "...to make contact or  
8 fails to facilitate access with the Third Party  
9 for the Party," and I think that should be  
10 "Participant," shouldn't it?

11 MR. SNEMIS: Boy, I'll tell you, this  
12 is an awfully long rule. I -- the answer is I  
13 don't know as I stand here, and I hesitate to  
14 jump to that conclusion. Mr. Schroer helped us.  
15 We're getting nods in the audience saying that we  
16 think you're right. It sounds right to me as  
17 well. We'll make the change, assuming that it is  
18 as it appears to be.

19 MR. POWDRILL: It seems to work  
20 better that way.

21 MR. SNEMIS: I'm making a note.  
22 Anything else?

23 CHAIRMAN GARD: Any other comments or



1 observations from the Board?

2 MR. POWDRILL: I've never seen so  
3 many comments on an N -- on a nonrule policy,  
4 both of them.

5 MR. SNEMIS: Thank you very much.

6 CHAIRMAN GARD: Okay. Thank you.

7 Today we will have the public hearing on  
8 the Silica Dust Citizen Petition that was  
9 presented at our March meeting. The purpose of  
10 the hearing is for the Board to receive testimony  
11 on the proposal and decide what, if any, action  
12 should be taken.

13 Anyone who wishes to speak and has not  
14 already done so, please fill out a speaker card.  
15 I will call on the speakers in the order that  
16 they are received.

17 This is a public hearing before the  
18 Environmental Rules Board on the petition to  
19 amend the definition of "hazardous air pollutant"  
20 in the Indiana Air Rules to include silica dust  
21 as a hazardous air pollutant.

22 The person who submitted the petition,  
23 Prudence Tokarz, is not able to be here today.

1 Her testimony is -- is at your desk, and I --

2 MS. KING: Chairman Gard, I just  
3 wanted to mention, as you mentioned, Ms. Tokarz  
4 got ahold of me this morning late to say that she  
5 was not able to attend, and she wanted to extend  
6 her regret because she really wanted to be here,  
7 so she asked that I print out the presentation  
8 she was going to give, which is fairly short, and  
9 we've provided that to you for you to read. So,  
10 that was provided in your packet at your seats  
11 today.

12 Thank you.

13 CHAIRMAN GARD: Thank you.

14 Jessica Reiss, from IDEM, is going to talk  
15 to us about this.

16 MS. REISS: Good afternoon, Madam  
17 Chair and members of the Board. My name is  
18 Jessica Reiss. I'm an attorney with the Office  
19 of Legal Counsel. I support the Office of Air  
20 Quality in the Rules Development Branch. The  
21 memo in your Board packet and my comments today  
22 are meant to describe the regulatory consequences  
23 of amending Indiana Air Rules as described in the

1 citizen's petition.

2 The petition asked the Board to amend the  
3 definition of "hazardous air pollutant" to  
4 include silica dust. The petitioner's concern  
5 was dust created during blasting operations at  
6 stone quarries.

7 Indiana thanks Ms. Tokarz for raising the  
8 issue and takes her concerns about Indiana's air  
9 quality very seriously.

10 HAP's are regulated in Indiana mostly by  
11 way of EPA regulation. The Indiana definition of  
12 "HAP" simply refers to the EPA definition.  
13 Indiana rules mostly just require sources to  
14 comply with the federal requirements. So, a  
15 discussion of federal HAP requirements is in  
16 order to understand Indiana HAP requirements.

17 Indiana [sic] regulates HAP's by way of  
18 three elements: Pollutants, source categories,  
19 and emission standards. EPA starts with 188  
20 specifically listed sources in the Clean Air Act.  
21 I'm sorry; specifically listed pollutants in the  
22 Clean Air Act. And EPA can add to and delete  
23 from that list. In addition, citizens can

1 petition EPA to add to or delete from that list.

2 EPA then lists categories of sources for  
3 each listed pollutant. This includes major  
4 sources and area sources. Major sources are  
5 individual sources that emit either ten tons per  
6 year of any HAP or 25 tons per year of any  
7 combination of HAP's. And area sources are  
8 smaller sources that, when aggregated together,  
9 cause environmental harm.

10 So, once EPA has its list of pollutants  
11 and its list of sources, EPA must create an  
12 emission standard for each listed source  
13 category. These are called NESHAP's, national  
14 emission standards for hazardous air pollutants,  
15 and they are based on MACT, maximum achievable  
16 control technology, which is based on the best  
17 controlled similar source within that specific  
18 source category. NESHAP's can apply to both new  
19 and existing sources.

20 In addition, when no NESHAP exists, new  
21 and reconstructed major sources must receive  
22 case-by-case MACT determinations. Again, a major  
23 source is one that emits above the 10- or

1 25-tons-per-year threshold. New or reconstructed

2 major sources that aren't covered by a NESHAP  
3 must comply with an emission limit equal to what  
4 would have applied if that NESHAP existed.

5 So, for our purposes today, if EPA listed  
6 silica dust as a HAP, EPA would have to list  
7 source categories, it would have to create  
8 NESHAP's, and in the absence of a NESHAP, new and  
9 reconstructed sources of silica dust would have  
10 to get case-by-case MACT determinations.

11 However, if Indiana listed silica dust as  
12 a HAP, as requested by the petition, no such  
13 obligations would result.

14 Indiana statutes and rules do not require  
15 the Board or IDEM to list sources, create  
16 NESHAP's, or apply case-by-case MACT  
17 determinations to the Indiana definition of  
18 "HAP." In fact, because of the way Indiana's  
19 rules are written, adding silica dust to the  
20 Indiana definition of "HAP" would create no  
21 additional duties for anyone -- the Board, IDEM,  
22 or sources.

23 Because HAP's are regulated in Indiana

1 mostly by way of EPA regulations, granting the

2 petition as written will not change regulation of  
3 silica dust in Indiana. However, existing  
4 Indiana rules and alternative approaches may  
5 achieve the goals of the petition, even though  
6 not through the means provided in the petition.

7 Dust from blasting operations is currently  
8 regulated as part of Indiana fugitive dust and  
9 fugitive particulate matter regulations. Dust  
10 blown beyond property lines must not increase the  
11 concentration of particulate matter in the air  
12 above specific thresholds provided in the rules.

13 In addition, the permitting process  
14 determines applicable limits and practices for  
15 fugitive particulate matter, which are included  
16 in a source's air permit and enforced through  
17 that air permit. This includes limits such as  
18 fugitive PM limits for crushed stone processing  
19 plants; federal standards for nonmetallic mineral  
20 processing plants; and Lake County specific  
21 fugitive PM rules.

22 As an alternative approach, the Board  
23 could find that the proper action for Ms. Tokarz

1 is to petition EPA to include silica dust as a  
2 federal HAP. If EPA listed silica dust, they

3 would list sources and create NESHAP's for all  
4 sources of silica dust, not just blasting  
5 operations. An EPA regulation would result in an  
6 Indiana regulation.

7 Or the Board could simply create  
8 stand-alone, Indiana-specific regulations for  
9 silica dust, separate from the HAP regulatory  
10 structure suggested by the petition.

11 Although the specific petition will not  
12 achieve the desired result, IDEM recognizes the  
13 amount of work Ms. Tokarz put into the petition  
14 and appreciates her effort to bring this issue to  
15 the attention of the Board.

16 May I answer any questions?

17 CHAIRMAN GARD: Yes.

18 Are there questions from any members of  
19 the Board?

20 (No response.)

21 MS. REISS: Thank you.

22 CHAIRMAN GARD: Thank you.

23 Is there anyone -- well, let me go through

1 this first.

2 Bowden Quinn.

3 MR. QUINN: Thank you, Madam Chair,  
4 members of the Board. I'm Bowden Quinn, Chapter  
5 Director of the Sierra Club, Hoosier Chapter.

6 I would like to address the fugitive dust  
7 aspect as was brought up in the memo that  
8 Ms. Reiss prepared for you. Whether or not the  
9 Board decides to list silica dust as a hazardous  
10 pollutant, in sufficient quantities for a  
11 sufficient duration, it does represent a health  
12 hazard to people off the property, if it -- if it  
13 indeed does go across the property lines.

14 And whether it's listed as a HAP or not,  
15 those people will not be protected unless the  
16 fugitive dust rule is protected, and as you heard  
17 in Ms. Tokarz's testimony last time when she  
18 presented the petition, the fugitive dust rule is  
19 not sufficiently protective.

20 And that's because, as the memo states,  
21 the rule is enforced by observations by a  
22 qualified representative of the Commissioner of  
23 visible emissions crossing the property line, and

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1 IDEM has interpreted that or has limited that  
2 qualified representative of the Commissioner to  
3 IDEM personnel only, and obviously, when you have



4 locations around the state that you -- IDEM is  
5 receiving fugitive dust complaints, IDEM's  
6 inspectors cannot get out there in time to see --  
7 necessarily see the fugitive dust crossing the  
8 property line.

9 That's why I think it would be advisable  
10 to -- whether it's to change the rules or simply  
11 change the policy that the Board might direct to  
12 IDEM to have IDEM allow local county officials to  
13 be designated representatives of the Commissioner  
14 for the enforcement of this rule, after they've  
15 taken the necessary training.

16 And I think at the hearing in March, there  
17 was a letter from a health official in Gibson  
18 County who was willing to go through this  
19 procedure so that they could designate one of  
20 their staff as an observer, and a qualified  
21 observer, of fugitive dust emissions, because  
22 they know the problems. They have surface mines  
23 there. They receive complaints from their

1 citizens about dust coming off the property line.  
2 This is particularly after blasts, but also  
3 sometimes perhaps from vehicle traffic.

4 Now, a local official is not going to be  
5 overly onerous on a business that, you know, pays  
6 taxes to that county, but they also recognize the  
7 concerns of their citizens and they know the  
8 situation on the ground. So, I would urge the  
9 Board to consider having the rule change or  
10 having IDEM's policies change to allow local  
11 officials to be designated representatives of the  
12 Commissioner for the enforcement of this rule.

13 My understanding is that IDEM already  
14 relies on local officials for enforcement of the  
15 regulation of outdoor wood-burning furnaces, and  
16 I think other agencies like the State Fire  
17 Marshal's Office relies on local officials for  
18 the enforcement of some of their regulations.

19 So, it just seems to me common sense that  
20 IDEM is not going to be able to get down -- I  
21 mean the dust clouds come from a certain action  
22 by the industry or business which, you know, may  
23 be very brief, and also due to certain weather

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1 conditions that may change, so it seems to me  
2 common sense that local officials be allowed to  
3 enforce this fugitive dust rule.

4 CHAIRMAN GARD: Thank you, Bowden.

5 Are there any questions for Bowden?

6 MR. ANDERSON: Just a couple of quick  
7 questions. I guess you wouldn't see that really  
8 listing this as a hazardous air pollutant would  
9 be a solution for this Board.

10 MR. QUINN: Not if -- it seems to me,  
11 not if the fugitive dust rule isn't enforced.

12 MR. ANDERSON: So, it's basically, in  
13 your opinion, then, a matter of enforcement of  
14 current regulations? There are protections that  
15 really do exist, but it's a matter of how that  
16 enforcement takes place?

17 MR. QUINN: Any air pollutant,  
18 visible air pollutant, that goes across property  
19 lines and presents a hazard to the surrounding  
20 community should be -- there should be ways to  
21 prevent that or to enforce against it.

22 MR. ANDERSON: Any other potential  
23 third-party enforcement opportunity to --

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1 MR. QUINN: It seems to me --

2 MR. ANDERSON: I mean I understand  
3 that if there is a significant problem that  
4 requires an inspector to actually see it, if

5 there's no inspector there and you know this is a  
6 reoccurring problem, where do citizens -- you  
7 know, what --

8 MR. QUINN: Well, I mean there's also  
9 the question of photographic evidence, and this  
10 is, I think, kind of agency-wide that they don't  
11 allow photographic evidence for enforcement. I  
12 can see a certain reason for that, but it seems  
13 to me, with, you know, new technology where  
14 people have their smartphones and can immediately  
15 send it -- send a picture of a dust cloud to IDEM  
16 or to a local official, that there should be at  
17 least some credibility given to photographic  
18 evidence of violation of the fugitive dust rule.

19 CHAIRMAN GARD: Yeah, I agree with  
20 you, Bowden. With a lot of the modern  
21 technology, it seems to me that some of that  
22 could be adapted to be used.

23 Gary?

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1 MR. POWDRILL: Would you -- if the  
2 agency would utilize the county people to do this  
3 job, would you expect them to be compensated for  
4 that?

5 MR. QUINN: You mean by the state?

6 MR. POWDRILL: Yeah.

7 MR. QUINN: No, I don't think

8 that's -- that wasn't -- the Gibson County

9 official was perfectly willing to pay for the

10 training, which my understanding is about \$250 to

11 go to a smoke school, would pay for that

12 training, and this would be their employee. So,

13 there shouldn't need to be any compensation.

14 MR. POWDRILL: But it's added work to

15 that county.

16 MR. QUINN: Excuse me?

17 MR. POWDRILL: It's added work to the

18 county health department.

19 MR. QUINN: Well, yeah, but I mean

20 they are the county health department, and they

21 realized that this was a health problem that they

22 should be addressing. But they can't address it

23 under the current fugitive dust rule.

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1 MR. RULON: Basically, that official

2 would only be turning the report in to IDEM for

3 IDEM to take action upon; right? Would you

4 envision that?

5 MR. QUINN: Well, no. I think that a

6 qualified observer should be allowed to find some  
7 kind of notice of violation. Yeah, maybe that  
8 would have to go through IDEM, but then IDEM  
9 should, if it is -- I mean all we're saying is  
10 this person should be -- should qualify under  
11 this language as a qualified representative,  
12 so --

13 MR. RULON: But you could see the  
14 concern, though, that somebody who doesn't like  
15 the coal company and happens to be in the health  
16 department red tags the operation of the coal  
17 mine without IDEM even having the ability to --  
18 that's why I --

19 MR. QUINN: Yeah.

20 MR. RULON: -- I can see them being a  
21 certified observer. I'm really not sure I want  
22 the county guys to --

23 MR. QUINN: Well, I --

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1 MR. RULON: They should at least work  
2 with you guys before they shut something down.

3 MR. BAUSMAN: I guess my question is  
4 we're now moving a little bit away from what even  
5 the hearing is supposed to be on, which is  
6 added -- which was the silica dust being added as

7 a hazardous air pollutant. I think we're now  
8 shifting -- it seems the discussion is now  
9 getting shifted to the staffing of IDEM and  
10 allowing the local -- you know, the state having  
11 the local government do it, which I think is  
12 beyond the scope of --

13 CHAIRMAN GARD: Well, it's out of the  
14 scope of the petition, but I do think that it's a  
15 discussion that maybe could help IDEM use the  
16 fugitive dust rule to solve the problem rather  
17 than having to go to the extreme of naming a  
18 hazardous material.

19 And Bowden, I'd forgotten to tell you  
20 about a three-minute limit, which you -- actually  
21 you did very well.

22 MR. QUINN: Thank you very much.

23 CHAIRMAN GARD: Tony Sullivan. And

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1 we do have a three-minute limit, but if you go  
2 over a minute, that's all right.

3 MR. SULLIVAN: I won't go over a  
4 minute. Thank you, Chairwoman Gard. My name's  
5 Tony Sullivan. I'm an attorney at Barnes &  
6 Thornburg, and I'm giving this statement on

7 behalf of Indiana Cast Metals Association and the  
8 Indiana Mineral Aggregates Association.

9 I guess, for starters, I drafted this  
10 statement before I came, so this statement is  
11 based on the petition and not on the fugitive  
12 dust enforcement issue that this has morphed  
13 into, and I guess in terms of the petition as to  
14 whether silica dust should be declared a HAP by  
15 Indiana, we don't think it should be.

16 We think that the hazardous air pollutant  
17 list is an EPA list. EPA's charged with amending  
18 it. EPA has the resources to evaluate the  
19 substance. Indiana doesn't have the resources so  
20 much, and as Jessica pointed out, even if it was  
21 declared a HAP, it wouldn't change the regulatory  
22 requirements.

23 So, that's pretty much our position. We

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1 think it's a federal issue, not a state issue,  
2 for designating the HAP list.

3 Thank you.

4 CHAIRMAN GARD: Thank you.

5 Are there any questions for Mr. Sullivan?

6 MR. HILLSDON-SMITH: I do.

7 What -- your clients, the members of



8 your -- your clients, what do they currently do  
9 to minimize the threats of silica dust in the  
10 surrounding communities? Do they already have  
11 control mechanisms --

12 MR. SULLIVAN: Yeah.

13 MR. HILLSDON-SMITH: -- in place?  
14 You know, in light of the DNR regulations, do  
15 they do it on their own?

16 MR. SULLIVAN: Yeah. No, I think  
17 Jessica pointed out that most of these members  
18 and all sources in the State of Indiana that are  
19 required to get air permits have to meet certain  
20 particulate matter limits, have to develop  
21 fugitive control dust plans, normally, to control  
22 fugitive dust, and are subject to the fugitive  
23 dust rules that Bowden was talking about, which

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1 he doesn't like the enforcement of, but the rules  
2 are there, and they're there in a few different  
3 ways than he described, but -- so, they have  
4 plans, they have limits, and they have  
5 prohibitions.

6 MR. HILLSDON-SMITH: Do we know how  
7 much still permeates the boundaries of their

8 property?

9 MR. SULLIVAN: Well, I think the  
10 Indiana law, and Jessica can convince me  
11 otherwise, is that it's prohibited from  
12 permeating -- visible emissions are prohibited  
13 from crossing the boundary.

14 MR. HILLSDON-SMITH: Okay. That's  
15 all.

16 MR. SULLIVAN: Is that right?

17 MR. CARMICHAEL: Coincidentally, the  
18 OSHA standard is the same as -- the OSHA standard  
19 facility concentration is the same as the  
20 fugitive dust concentration, so if -- in  
21 particular here, if a company has silica dust  
22 leaving the plant at that concentration, they're  
23 already in violation of the OSHA standard.

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1 MR. HILLSDON-SMITH: Hmm.

2 MR. CARMICHAEL: And my guess is that  
3 they're not. Now, I don't have the facts or  
4 specifics, but the standard is -- the fugitive  
5 dust standard happens to be the same  
6 concentration as the silica -- the OSHA silica  
7 standard.

8 DR. NIEMIEC: Just for completeness,

9 I would mention that there's a proposal for  
10 general administrative maritime for a motion to  
11 decrease the permissible exposure limit, again,  
12 but it's not a massive decrease, and that's just  
13 a proposal.

14 CHAIRMAN GARD: Are there any other  
15 questions?

16 (No response.)

17 CHAIRMAN GARD: Vince Griffin?

18 MR. GRIFFIN: Thank you, Madam Chair,  
19 members of the Board. I'm Vince Griffin, with  
20 the Indiana Chamber.

21 I think IDEM did a real fine job with  
22 reviewing what the technical detail is of this,  
23 and quite simply, we believe they're adequate for

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1 protection out there for the workers, for the  
2 public, and for our environment, and the petition  
3 should be dismissed.

4 Thank you.

5 CHAIRMAN GARD: Are there any  
6 questions for Vince?

7 (No response.)

8 CHAIRMAN GARD: Thank you.

9 MR. GRIFFIN: It's always good to go  
10 last.

11 (Laughter.)

12 CHAIRMAN GARD: Is there anyone in  
13 the audience that wishes to speak that didn't  
14 sign an appearance form?

15 (No response.)

16 CHAIRMAN GARD: If there's no one,  
17 this hearing is concluded.

18 If the Board wishes to deliberate further  
19 on the petition, we have several options: Do not  
20 amend the definition of "hazardous air pollutant"  
21 to include silica dust, that could be official  
22 action; take no further action on the petition;  
23 have a motion to begin a rulemaking to amend the

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1 definition of "hazardous air pollutant" to  
2 include silica dust. So --

3 DR. NIEMIEC: I have one comment  
4 first. Would IDEM like to just briefly respond  
5 to today's comments from the commenters?

6 MR. PIGOTT: Well, I would have one  
7 simple response regarding the fugitive dust  
8 regulations. I think there are reasons to be  
9 cautious about the technology we use and ensuring

10 that the right people with the right training

11 regimen are in place.

12 In terms of the particulars of this

13 specific situation near the location of the

14 petitioner, it is, I think, a salient point to

15 note that IDEM issued a violation letter to the

16 facility for a fugitive dust violation. So,

17 while I understand people's concerns about IDEM's

18 not always catching everyone, in some particular

19 situations, this one in particular, the agency

20 did act. So, there is current enforcement.

21 CHAIRMAN GARD: So, we have a number

22 of options that we can consider.

23 DR. NIEMIEC: Can we clarify the

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1 difference between no further action and then

2 specifically not adding to the list? Basically,

3 no further action would not be adding to the list

4 of HAP's anyway.

5 CHAIRMAN GARD: That's correct.

6 DR. NIEMIEC: So, no further action

7 would be conclusive, it seems.

8 CHAIRMAN GARD: Yes, that would be

9 the end, at least for us.

10 DR. NIEMIEC: Any other comments from

11 the Board?

12 MS. BOYDSTON: Bruno, did you take

13 that action after she came here?

14 MR. PIGOTT: It was after. It was

15 within the past month.

16 CHAIRMAN GARD: Oh, okay.

17 MR. PIGOTT: It was independent of

18 this process. I just think it's a salient point.

19 MS. BOYDSTON: No, it is. I was just

20 curious how that might have altered her opinion,

21 but it sounds like she submitted this before. Is

22 she aware that you did that?

23 MR. PIGOTT: I don't know whether

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1 she's aware of that --

2 MS. BOYDSTON: Okay.

3 MR. PIGOTT: -- but we can make her

4 aware that we actually did that.

5 Roger?

6 This is Roger Letterman.

7 MR. LETTERMAN: Yeah. Bruno, yeah,

8 after they did the inspection, they did advise

9 her of the findings and the fact that we would be

10 sending out a violation letter. I'd like to

11 point out also, this was a water inspector that  
12 noted this and not an air inspector, so we do  
13 have people that can get this done.

14 MR. PIGOTT: Thank you, Roger.

15 DR. ALEXANDROVICH: May I ask Roger a  
16 question?

17 CHAIRMAN GARD: Yes.

18 Dr. Alexandrovich.

19 DR. ALEXANDROVICH: Do you guys keep  
20 kind of a record that you could share with the  
21 Board on the number of fugitive dust complaints  
22 and the results of those complaints?

23 MR. LETTERMAN: I've got it right

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1 here. Over ten years we've had 118 fugitive dust  
2 complaints, so about 11, 12 per year. That's  
3 grain elevators, mines, quarries, asphalt plants,  
4 steel mills, it runs the gamut. So far, 18  
5 violation letters, four enforcement actions per  
6 year, and we have averaged 24 warning letters per  
7 year. So, we do see these. We do act on them.  
8 We don't catch them all, but --

9 DR. ALEXANDROVICH: Is it -- the  
10 first number, 118, that was complaints per year

11 or per --

12 MR. LETTERMAN: No, that's over the  
13 past ten years.

14 DR. ALEXANDROVICH: Ten years?

15 MR. LETTERMAN: Yeah.

16 DR. ALEXANDROVICH: So, not all of  
17 those fines, enforcements and warnings came out  
18 of complaints, or did they?

19 MR. LETTERMAN: Yeah.

20 DR. ALEXANDROVICH: Okay.

21 MR. LETTERMAN: Yeah.

22 MR. HILLSDON-SMITH: Do we know the  
23 total universe number of facilities that's -- do

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1 you have that number?

2 MR. LETTERMAN: Yeah. I mean we get  
3 them for county roads.

4 MR. HILLSDON-SMITH: Okay.

5 MR. LETTERMAN: So, yeah.

6 CHAIRMAN GARD: Okay. I assume,  
7 since no one's making a motion, that we'll have  
8 no further motion -- no further action.

9 MR. POWDRILL: I'll move that we make  
10 no further action.

11 MR. RULON: Second.



12 CHAIRMAN GARD: Is there further

13 discussion?

14 (No response.)

15 CHAIRMAN GARD: Did you all hear the

16 motion?

17 (No response.)

18 CHAIRMAN GARD: All in favor of the

19 motion to take no further action, say aye.

20 MR. HILLSDON-SMITH: Aye.

21 DR. NIEMIEC: Aye.

22 MR. ANDERSON: Aye.

23 MS. BOYDSTON: Aye.

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1 MR. POWDRILL: Aye.

2 MR. CARMICHAEL: Aye.

3 MR. METTLER: Aye.

4 MR. BAUSMAN: Aye.

5 DR. ALEXANDROVICH: Aye.

6 MR. ETZLER: Aye.

7 MR. RULON: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed, nay.

10 (No response.)

11 CHAIRMAN GARD: Okay. No further

12 action on the petition. And we do appreciate the  
13 petitioner bringing this to us, and we'll convey  
14 this to her.

15 MS. KING: I will. I told her I'd  
16 let her know the outcome of the hearing today.

17 CHAIRMAN GARD: Thank you.

18 At our last meeting, there was report of  
19 the Advisory Committee discussion on the citizen  
20 petition to amend the definition of  
21 "interference" in the water rules at  
22 327 IAC 5-17-11. I appointed the Advisory  
23 Committee as allowed under IC 13-13-8-14. Is

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1 there any Board discussion on the issue, the  
2 petition?

3 DR. ALEXANDROVICH: Madam Chair, can  
4 I ask Bruno a question?

5 CHAIRMAN GARD: Yes.

6 DR. ALEXANDROVICH: Notwithstanding  
7 the definition of "interference," does IDEM have  
8 any authority to go into an industrial discharger  
9 to ask for information because you have some  
10 suspicions that there's some -- something that  
11 might upset the plant, the POTW?

12 MR. PIGOTT: If there's an industrial

13 discharger that pretreats a product, we can  
14 conduct an audit of the pretreatment community or  
15 entity, and, you know, all of -- as part of that  
16 process, we may go to facilities as a matter of  
17 course.

18 DR. ALEXANDROVICH: Okay.

19 MR. PIGOTT: We can certainly do  
20 that.

21 DR. ALEXANDROVICH: So, you don't  
22 need to -- that definition as it exists to go in  
23 and investigate a suspected problem?

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1 MR. PIGOTT: What we need is -- what  
2 we're required to have is a federal definition.  
3 That's the only requirement is that we have a  
4 federal definition of "interference."

5 MR. POWDRILL: Madam Chair?

6 CHAIRMAN GARD: Yes.

7 MR. POWDRILL: Would you entertain a  
8 motion?

9 CHAIRMAN GARD: Yes, I would.

10 MR. POWDRILL: I would like to move  
11 that the Board direct the agency to proceed with  
12 a rulemaking that amends the definition of

13 "interference" to that language recommended by

14 Dr. Beranek.

15 CHAIRMAN GARD: Which is?

16 MR. POWDRILL: Change "and" -- the

17 "and" to an "or," I believe, is the --

18 CHAIRMAN GARD: Do you want to state

19 that --

20 MR. POWDRILL: That was in the --

21 CHAIRMAN GARD: -- exactly as it --

22 MR. POWDRILL: That was one of the

23 options that was in --

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1 DR. BERANEK: My name is Bill

2 Beranek. What -- I don't want to do it off the

3 top of my head, but it is in the petition that

4 you've got. The language is in the petition, and

5 it does include the changing from an "and" --

6 from an "or" to an "and," but then it reletters

7 things. I mean it's not -- but that's the

8 essence of -- the essence of it is that you have

9 to have both of the conditions, not just one of

10 the conditions, in order to be interfering with

11 the plant.

12 CHAIRMAN GARD: Okay. There's been a

13 motion made. Is there a second to the motion?

14 MR. RULON: Second.

15 CHAIRMAN GARD: Is there further  
16 Board discussion on the motion?

17 DR. NIEMIEC: Just very briefly.

18 What is IDEM's opinion regarding how closely that  
19 mirrors the EPA language, even though it's not  
20 the same language?

21 MR. PIGOTT: I -- Nancy, can you help  
22 me? I'm not sure how it -- how closely it  
23 mirrors it. One option for the Board would be to

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1 consider just referencing the federal definition,

2 I suppose.

3 MS. KING: I would suggest that if  
4 this Board makes the motion to amend for us to  
5 begin a rulemaking to amend the definition to  
6 comport with the citizen's petition, that that  
7 would be a full rulemaking, which will have  
8 notices and first -- preliminary and final  
9 adoption.

10 So, in terms of tweaking the language,  
11 obviously the way to be most correct as far as  
12 the federal definition is simply to incorporate  
13 by reference, which we do often. Sometimes folks

14 don't like that because they want to be able to  
15 read it there, as I believe David Pippin pointed  
16 out to the Board when he provided the Advisory  
17 Committee report. Trying to do it in State  
18 Legislative Services style versus how it is in  
19 the Federal Register becomes a little messy.

20 So, that being the case, we have a number  
21 of options as to how we could make the language  
22 comport with federal law, and as that appears to  
23 be the gist of the motion provided, there would

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1 certainly be ample opportunity to comment on the  
2 actual language or the process that we would use.  
3 But if the Board directs us to begin a rulemaking  
4 to make it comport with federal law, then we  
5 would do so, and all of the public input that  
6 goes with regular rulemaking would apply to that.

7 DR. NIEMIEC: I have a quick question  
8 then for Gary.

9 So, does that sound acceptable to you, for  
10 them to have some language come forth that  
11 perhaps comes close to including both --

12 MR. POWDRILL: Absolutely.

13 DR. NIEMIEC: -- Bill's and the --

14 MR. POWDRILL: Absolutely.

15 DR. NIEMIEC: -- public -- I second

16 that proposal -- the motion.

17 CHAIRMAN GARD: Are there any -- is

18 there any further discussion or are there any

19 further questions for Nancy or anybody in terms

20 of the agency that can answer?

21 MR. ETZLER: I'll just make a

22 comment. I haven't changed my position from what

23 it was initially, so when I vote, you'll

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1 understand the reason why.

2 DR. ALEXANDROVICH: I can add to

3 that. I went back and forth, up and down,

4 forward and backwards and studied this a lot, and

5 talked with -- you know, I represent local

6 government -- talked with a bunch of locals, and

7 got both sides there as well. And I think IDEM

8 has the tools that they need to do, which they

9 said they -- why they wanted the definition to

10 keep that.

11 But I also think, as far as local

12 government is concerned, one, it solves a problem

13 for the fact that a proportion of the local

14 POTW's have the federal definition, have the

15 state definition putting them in noncompliance,  
16 it solves that, and I think it -- since the local  
17 state -- other states around us have the federal  
18 definition, it puts us on an equal footing, and  
19 locals can do what they want to be more  
20 stringent. So, I'm going to vote for the rule.

21 CHAIRMAN GARD: Okay. We have a  
22 motion on the floor that has been seconded. Any  
23 further comments?

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1 (No response.)

2 CHAIRMAN GARD: If not, we'll try a  
3 voice vote. All in favor, say aye.

4 MR. HILLSDON-SMITH: Aye.

5 DR. NIEMIEC: Aye.

6 MS. BOYDSTON: Aye.

7 MR. POWDRILL: Aye.

8 MR. CARMICHAEL: Aye.

9 MR. METTLER: Aye.

10 MR. BAUSMAN: Aye.

11 DR. ALEXANDROVICH: Aye.

12 MR. RULON: Aye.

13 CHAIRMAN GARD: Aye.

14 Opposed, nay.

15 MR. ETZLER: Nay.



16 MR. ANDERSON: Nay.

17 CHAIRMAN GARD: Okay. The ayes  
18 clearly have it. We'll proceed to rulemaking,  
19 and thank you. It's gone on for about a year and  
20 a half, I think, so it's nice to move it to  
21 somebody else's inbox.

22 (Laughter.)

23 CHAIRMAN GARD: An open -- this is an

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1 open forum. Is there anyone who wishes to  
2 address the Board today?

3 (No response.)

4 CHAIRMAN GARD: If not, we'll be in  
5 re -- the next meeting will probably be either  
6 January 13th or February the 10th of 2016. If  
7 the weather's bad, we're not going to risk life  
8 and limb for this, so we'll pay attention to  
9 that.

10 But is there a motion to adjourn?

11 DR. NIEMIEC: So moved.

12 CHAIRMAN GARD: Second?

13 MR. CARMICHAEL: Second.

14 CHAIRMAN GARD: All in favor, say  
15 aye.

16 MR. HILLSDON-SMITH: Aye.  
17 DR. NIEMIEC: Aye.  
18 MR. ANDERSON: Aye.  
19 MS. BOYDSTON: Aye.  
20 MR. POWDRILL: Aye.  
21 MR. CARMICHAEL: Aye.  
22 MR. METTLER: Aye.  
23 MR. BAUSMAN: Aye.

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1 DR. ALEXANDROVICH: Aye.  
2 MR. ETZLER: Aye.  
3 MR. RULON: Aye.  
4 CHAIRMAN GARD: Aye.  
5 Nay?  
6 (No response.)  
7 CHAIRMAN GARD: Meeting is adjourned.

8 - - -  
9 Thereupon, the proceedings of  
10 October 14, 2015 were concluded  
11 at 3:52 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, October 14, 2015 in this matter and  
8 transcribed by me.

9

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11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires October 27, 2016.

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